TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 273.

GRANVILLE RIPPEY, PLAINTIFF IN ERROR,

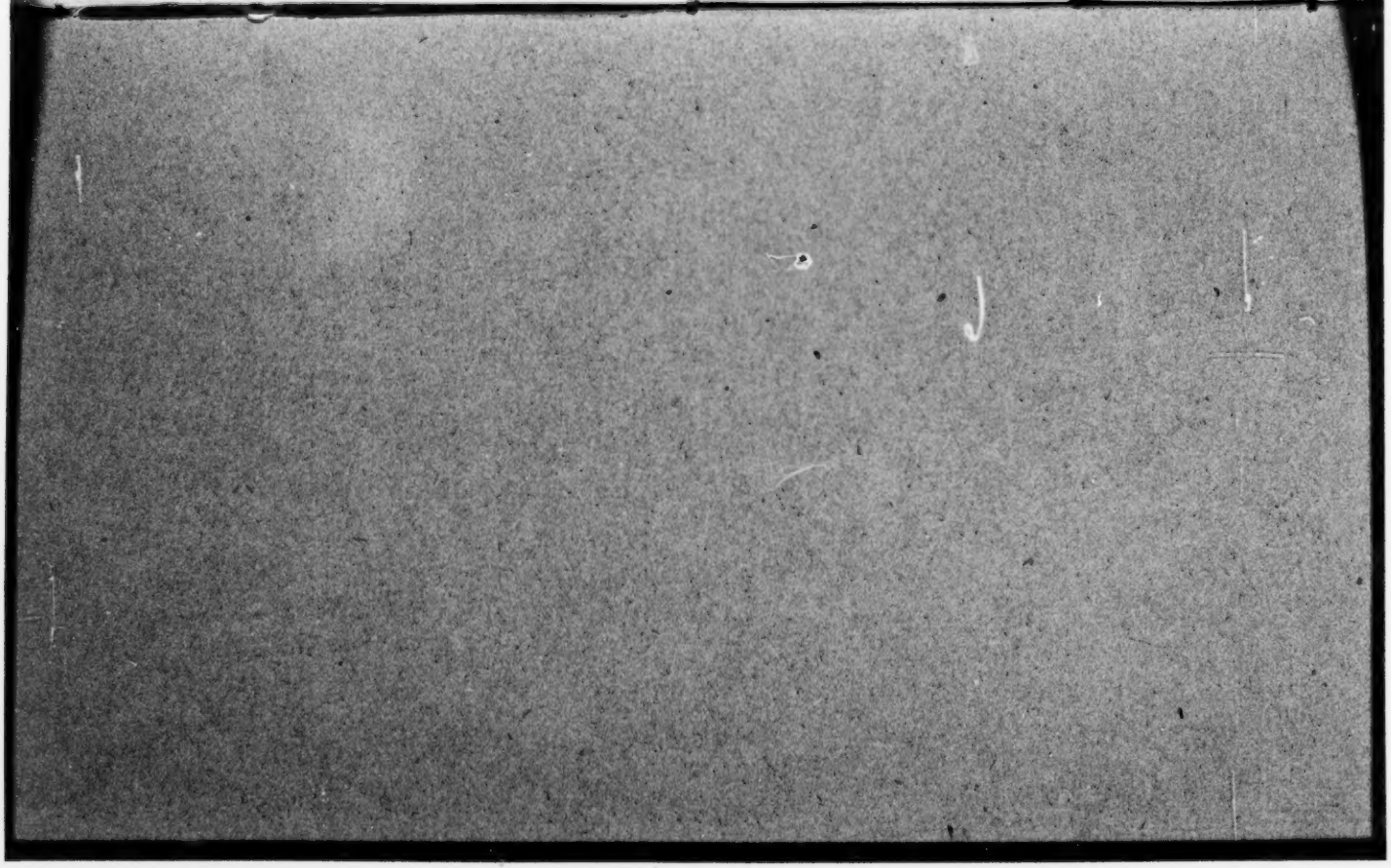
vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

FILED MAY 6, 1903.

(18,919.)



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1 *Caption.*

THE STATE OF TEXAS:

At a term of the court of criminal appeals of the State of Texas begun and holden within and for the State of Texas, at Dallas, Texas, the Honorable W. L. Davidson, presiding judge thereof, the following cause came on to be heard on the transcript of the record, and on briefs of both parties, to-wit:

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. (1st Assignment.)

Caption.

Transcript of the proceedings had in the county court of Grayson county, Texas.

THE STATE OF TEXAS, }
County of Grayson. }

At a term of the county court of Grayson county, Texas, begun and now being holden within and for the county of Grayson, at Sherman, the Honorable G. P. Webb, judge thereof presiding, the following cause came on for trial, to-wit:

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

2 *Complaint.*

In the name and by the authority of the State of Texas:

W. M. Blaylock, being duly sworn on his oath deposes and says on information and belief that in the county of Grayson, and State of Texas, on the 8th day of February, 1902, an election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published to determine whether or not the sale of intoxicating liquors should be prohibited in commissioners' precinct No. 4 of said county, and the qualified voters at said election did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioners' precinct of said county, and thereupon the commissioners' court of said county did pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said commissioners' precinct. And

thereafter, on to-wit; the 18th day of April, 1902, in said commissioners' precinct in said State of Texas and county of Grayson one Granville Rippey did unlawfully sell to W. J. Anderson one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State.

W. M. BLAYLOCK.

Signed and sworn to before me, this April 19th, 1902.

J. H. TRUETT,
County Attorney, Grayson County, Texas,
By JNO. T. SUGGS, *Ass't.*

Filed Apr. 19", 1902.

P. F. ELLIS,
Clk Co. Ct., Grayson Co., Texas,
By AMY ELLIS, *Deputy.*

3 *Information.*

In the name and by the authority of the State of Texas:

The county attorney for Grayson county, Texas, information makes in the county court in and for said county, that in the county of Grayson, State of Texas, on the 8th day of February A. D. 1902, an election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published, to determine whether or not the sale of intoxicating liquors should be prohibited in commissioners' precinct No. 4 of said county, and the qualified voters at said election did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioners' precinct of said county, and thereupon the commissioners' court of said county did pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said commissioners' precinct. And thereafter, on to-wit: the 18th day of April, 1902, in the said commissioners' precinct in said State of Texas and county of Grayson, one Granville Rippey did unlawfully sell to W. J. Anderson one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State.

J. H. TRUETT,
County Attorney for Grayson County, Texas.

Filed Nov. 29", 1902.

P. F. ELLIS,
Clerk of the County Court, Grayson Co., Texas,
By AMY ELLIS, *Deputy.*

4 *Def't's Motion to Quash Complaint and Information.*

In the County Court of Grayson County, Texas, January Term, 1903.

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. —.

Now comes the defendant, and moves the court to quash the purported affidavit and the purported complaint thereupon against him herein, because the same charge no offense, in that they fail to charge any violation of law, in that arts. 3384 to 3399, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited, is also void, upon the following grounds and for the following reasons, to-wit:

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

5 3.

Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government, in that, in contravention to the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views and against other persons and citizens holding opposite views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that, as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That article 3395 operates to deny to the citizens the equal protection of the law, in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated, and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies equal protection of the law in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in a large district, to be selected by them, which shall include the said town or city, and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if at an election, prohibition should carry in any town or city, it cannot be defeated by an inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said statute further denies the equal protection of the law in that it provides that when prohibition has been carried at an election in

the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

Wherefore, premises considered, defendant prays this honorable court to quash, vacate, set aside and hold for naught the purported affidavit and information exhibited herein against him, and as etc.

CLARK & BALINGER,
MOSELEY & EPPSTEIN,
ETHERIDGE & BAKER,
Attorneys for Defendant.

Filed Jan. 15, 1903,

P. F. ELLIS, *Co. Clerk.*
By AMY ELLIS, *Deputy.*

Order of Court Overruling Motion.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

Now on this day came on to be heard the motion made by defendant, Granville Rippey, to quash the purported affidavit
8 and the purported complaint thereon against him herein, and the same, having been considered by the court, is in all things overruled, to which action of the court defendant in open court excepted and said exception is here entered of record.

Judgment of the Court.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

This day the above entitled and numbered cause being called for trial, appeared the parties, the State by her county attorney, and the defendant, Granville Rippey, in person and by attorney, and announced ready for trial. And the defendant Granville Rippey pleaded not guilty to the information herein, and a jury being

waived, the cause was submitted to the court, who, after having heard the information read, the defendant's plea of not guilty, the evidence submitted and the argument of counsel thereon, finds the defendant, Granville Rippey, is guilty of the offense as charged in said information and assesses his punishment at a fine of twenty five dollars and imprisonment in the county jail of Grayson county for twenty days.

It is therefore considered, ordered and adjudged by the court that the State of Texas do have and recover of and from the said defendant, Granville Rippey, the amount of said fine, to-wit, the sum of twenty five dollars and all costs of this prosecution; and that the defendant Granville Rippey, being present in the court, he is further ordered into the custody of the sheriff to be by him committed to the jail of said county there to be confined for a period of twenty days from this date, and further, until the fine and costs aforesaid are fully paid and it is ordered that execution may issue against the property of said Granville Rippey for the amount of such fine and costs.

9 *Statement of Facts.*

STATE OF TEXAS, }
Grayson County. }

In the County Court of Grayson County, Texas, — Day of Feb., 1903.

STATE OF TEXAS }
vs. }
GRANVILLE RIPPEY. }

Be it remembered that on the trial of the above entitled and numbered cause, the following contains all of the facts proved, to-wit:

1.

1st. That commissioners' district No. 4 of Grayson county, Texas, is composed of two justice's precincts, each of which is composed of three voting boxes.

2nd. That on or about the 8th day of November, 1901, a prohibition election was held in the western justice precinct, to-wit, justice precinct No. 6, which election resulted in favor of prohibition.

3rd. That prior thereto several months, an election was held in the town of Pottsboro, which was one of the voting boxes in the eastern justice precinct, which election was contested and resulted in no election.

4th. That after said election had been held in the Pottsboro box and before the election (hereinabove referred to as being held in justice precinct No. 6) was held, an election was called for the entire eastern justice precinct, to-wit, justice precinct No. 7. This election resulted against prohibition.

5th. That thereafter, to-wit, sometime during the fall of 1901, an election was held in two school districts in justice precinct No. 7, which election was held in the voting box of Preston. This election resulted in favor of prohibition.

6th. By reason of the foregoing elections after the 8th day
10 of November, 1901, every box in commissioners' district No. 4, excepting only two boxes called, respectively, Pottsboro and Locust, had already declared in favor of prohibition at the various elections hereinbefore mentioned and in the only elections in which these two boxes were included, the result had been against prohibition.

7th. An election was thereafter called on to-wit, the 2nd day of February 1902, for all of commissioners' district No. 4 which included all of the boxes hereinbefore mentioned that had gone "dry" and the two boxes known as Pottsboro and Locust, which had at all previous elections gone "wet," and which it is admitted in open court were the only portions of the district that had not previously by a vote declared in favor of prohibition. This election resulted in favor of prohibition.

8th. All such elections were held in the manner prescribed by the Revised Statutes of the State of Texas.

9th. The uncontradicted proof was that on the day mentioned in the information and complaint herein, Granville Rippey, at Pottsboro in commissioners' district No. 4, sold one bottle of whiskey to —— —— for the sum of one dollar. No evidence was offered by the defendant.

It is agreed in by the parties in the above entitled and numbered cause that the foregoing is a correct statement of all of the facts admitted and proved in evidence on the trial of said cause.

Witness our hands this 5th day of February A. D. 1903.

GRANVILLE RIPPEY,
By ETHERIDGE & BAKER,
CLARK & BALLINGER,
MOSELEY & EPPSTEIN, *Attorneys.*
J. H. TRUETT,
11 *County Attorney, Grayson County, Texas,*
By JNO. T. SUGGS, *Ass't.*

The above and foregoing statement of facts, having been submitted to me, has been by me examined and I approve the same as correct and order it to be filed by the clerk in the record as the statement of facts in the above entitled and numbered cause, this 5th day of February, A. D. 1903.

G. P. WEBB,
County Judge, Grayson Co., Texas.

Filed February 7", 1903.

P. F. ELLIS, *Co. Clerk,*
By AMY ELLIS, *Deputy.*

Motion for New Trial.

STATE OF TEXAS, }
Grayson County. }

In the County Court of Grayson County, Texas.

THE STATE OF TEXAS, Plaintiff, }
vs. }
GRANVILLE RIPPEY, Defendant. }

Now comes the plaintiff and files this his motion for a new trial in the above numbered and entitled cause and asks that the judgment entered herein be set aside for the following reasons, viz:

1.

Because the court erred in overruling defendant's motion to quash the purported affidavit and the purported complaint thereupon against the defendant therein in which the defendant charges that the same charged no offense, in that they fail to charge any violation of the law, in that articles 3384 to 3389, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402
12 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, town or city, in which the sale of intoxicating liquor has been prohibited, is also void upon the following grounds and for the following reasons, to-wit:

1st. Because article 3395 of the Revised Statutes of the State of Texas, 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2nd. Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3rd. Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4th. Said local option statute, and especially the said article 3395, constitute class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government, in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views and against other persons

and citizens holding opposite views upon questions of public policy and concern.

5th. Said article 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that, as construed by the court of criminal appeals of the
13 State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6th. That art. 3395 operates to deny the citizens the equal protection of the law, in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise for a period of two years all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such a period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote thereafter as often as they shall see fit.

7th. Said article further denies equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated, and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8th. Said statute further denies equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in a large district to be selected by them, which shall include the said town or city, and in the event the election so to be held in the enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or
14 city. And because said statute further provides that if at an election prohibition should carry in any town or city it cannot be defeated by an inauguration of a subsequest election in an enlarged district, and upon the contrary, provides that when prohibition has been carried, at an an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9th. Said statute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition car-

ries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

2.

Because the said judgment is contrary to law and the evidence.

CLARK & BALINGER,
ETHERIDGE & BAKER,
MOSELEY & EPPSTEIN,
Attorneys for Defendant.

Filed January 16, 1903.

P. F. ELLIS,
County Clerk,
By H. K. ELLIS, *Deputy.*

15 *Order Overruling Motion for New Trial.*

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } 8532.

JANUARY 16", 1903.

Now on this day came on to be heard defendant's motion for a new trial filed in the above numbered and entitled cause, and said motion having been considered by the court, is in all things overruled, and the defendant, Granville Rippey, in open court excepted and gave notice of appeal to the court of criminal appeals for the State of Texas, from the judgment heretofore, to-wit on the 16th day of January, 1903, rendered, which exception and notice of appeal are here now entered of record.

It is therefore ordered and considered by the court that the said defendant, Granville Rippey, enter into a recognizance for an appeal in this cause in the sum of two hundred and fifty dollars, conditioned as required by law. And the said Granville Rippey, being present in custody, unless he enters into such recognizance, is now committed to the county jail of Grayson county, to be therein confined until the decision of the court of criminal appeals of the State of Texas herein can be made and received.

Bills of Exception.

In the County Court of Grayson County, Texas, January Term, A. D. 1903.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY.

Be it remembered that on the 16th day of January 1903, defendant presented the following motion to quash the purported affidavit

and the purported complaint thereupon against him herein, to-wit:

In the County Court of Grayson County, Texas, January Term, 1903.

STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. —.

Now comes the defendant, and moves the court to quash the purported affidavit and the purported complaint thereupon against him herein, because the same charge no offense, in that they fail to charge any violation of law, in that articles 3384 to 3399 inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of the said Revised Statutes, upon which this prosecution is based, are void, and in that article 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town, in which the sale of intoxicating liquor has been prohibited, is also void, upon the following grounds, and for the following reasons; to-wit.

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3.

17 Said art. 3395 denies to many persons within the jurisdiction of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons holding certain views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That art. 3395 operates to deny to the citizens the equal protection of the law in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

18 7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated and denies to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies the equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immediately thereafter, those in favor of prohibition may inaugurate an election in an enlarged district, to be selected by them, which shall include the said town or city and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if, at an election, prohibition should carry in a town or city it cannot be defeated by the inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said stitute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in

the entire county no election shall thereafter be ordered in
19 any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

Wherefore, premises considered, defendant prays this honorable court to quash, vacate, set aside and hold for naught the purported affidavit and information exhibited herein against him and as, etc.

Which said motion was in all things overruled by the court, to which ruling of the court defendant then and there excepted, whereupon defendant presents this his bill of exceptions and prays that same may be signed by the court and made a part of the record in this cause, which is accordingly done this 16th day of January, A. D. 1903.

G. P. WEBB,
Judge of the County Court of Grayson County, Texas.

Filed Jan'y 16, 1903.

P. F. ELLIS,
County Clerk,
By H. K. ELLIS, *Deputy.*

Recognizance.

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

JANUARY 16", 1903.

This day came into open court, Granville Rippey, defendant in the above numbered and entitled cause, and L. B. Eppstein and L. Sarazen, his sureties, and acknowledge themselves severally
20 indebted to the State of Texas in the penal sum of two hundred and fifty ($250.00) dollars, conditioned that the said Granville Rippey, who has been convicted in this cause of a misdemeanor, to-wit: that on the 8th day of February A. D. 1902 and election in accordance with the laws of this State was held under authority of an order of the commissioners' court of said county theretofore duly made and published to determine whether or not the sale of intoxicating liquors should be prohibited in commissioner's precinct No. 4 of said county, and the qualified voters at said election, did then and there determine that the sale of intoxicating liquors should be prohibited in said commissioner's precinct of said county, and thereupon the commissioners' court of said county did

pass and publish an order declaring the result of said election and prohibiting the sale of intoxicating liquors in said precinct.

And thereafter, on, to-wit, the 18th day of April, 1902, in said commissioners' precinct in said State of Texas and county of Grayson, one Granville Rippey did unlawfully sell to W. J. Anderson, one bottle of whiskey, same being intoxicating liquor, in violation of said law and against the peace and dignity of the State, and his punishment assessed at a fin*d* of twenty fi*fe* ($25.00) dollars and imprisonment in the county jail of Grayson county Texas for twenty days as appears from the judgment herein duly entered in, this cause, shall appear before this court from day to day and from term to term of the same and not depart without leave of this court in order to abide the judgment of the court of criminal appeals of the State of Texas in this cause.

21 *Defendant's Assignments of Error.*

STATE OF TEXAS, }
County of Grayson. }

In the County Court of Grayson County, Texas.

STATE OF TEXAS }
vs. }
GRANVILLE RIPPEY. }

Now on this day comes Granville Rippey and files this his assignment of errors committed by the court on the trial of *of* the above entitled and numbered cause and shows:

1. That the court erred in overruling the defendant's motion to quash the purported affidavit and the purported complaint thereupon against him in this cause, because the same charge no offense, in that they fail to charge any violation of the law, in that article 3384 to 3399, inclusive, of the Revised Statutes of the State of Texas, known as the local option law, and constituting title LXIX of said Revised Statutes, upon which this prosecution is based, are void, and in that art. 402 of the Penal Code, purporting to prescribe a penalty against any person who shall sell any intoxicating liquor in any county, justice precinct, city or town, in which the sale of intoxicating liquors has been prohibited, is also void upon the following grounds and for the following reasons, to-wit:

1.

Because art. 3395 of the Revised Statutes of the State of Texas of 1895, abridges the privileges and immunities of the citizens of the State of Texas and of the United States in contravention of the provisions of the Constitution of the United States in that respect.

2.

Said art. 3395 operates to deprive certain citizens of the United States, and especially this defendant, of liberty and property, without due process of law, in contravention of the provisions of the Constitution of the United States in that respect.

3.

Said art. 3395 denies to many persons within the jurisdic-
22 tion of the State of Texas the equal protection of the laws guaranteed them by the Constitution of the United States.

4.

Said local option statute, and especially the said art. 3395, constitutes class legislation within the meaning of the law, and is antagonistic to the essential principles of free republican government in that, in contravention of the provisions of the Constitution of the United States with reference thereto, it discriminates in favor of certain persons and citizens holding certain views upon questions of public policy and concern.

5.

Said art. 3395 is void, because in contravention of those provisions of the Constitution of the United States relating thereto, in that as construed by the court of criminal appeals of the State of Texas, it denies equal rights to a large portion of the citizenship of the State of Texas, and it bestows exclusive privileges upon a large class of other persons and citizens of said State, and which exclusive privileges are not in consideration of public services rendered.

6.

That art. 3395 operates to deny to the citizens the equal protection of the law in that it discriminates against those who vote against prohibition, and in favor of those who vote for prohibition, and operates to disfranchise, for a period of two years, all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally, while upon the contrary, it confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

23 7.

Said article further denies the equal protection of the law, in that it provides that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated and denies to those citizens who oppose prohibition the privilege of so voting in the event prohibition should carry in a town or city.

8.

Said statute further denies the equal protection of the law, in that it provides, in the event prohibition should fail to carry in a town or city, that immdeiately thereafter, those in favor of prohibition may inaugurate an election in an elnarged district, to be selected by them, which shall include the said town or city and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statute further provides that if, at an election, prohibition should carry in a town or city it cannot be defeated by the inauguration of a subsequent election in an enlarged district, and upon the contrary, provides that when prohibition has been carried at an election in the town, city or precinct such prohibition shall not be repealed, except at an election ordered and held for such town, city or precinct.

9.

Said statute further denies the equal protection of the law, in that it provides that when prohibition has been carried at an election in the entire county no election shall thereafter be ordered in
24 any subdivision of said county until after prohibition has been defeated in the entire county, and in disregard and denial of equal protection, it further provides that, should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

CLARK & BALINGER,
ETHERIDGE & BAKER,
MOSELEY & EPPSTEIN,
Attorneys for Defendant.

Filed Jan'y 16", 1903.

P. F. ELLIS,
County Clerk,
By AMY ELLIS, *Deputy.*

25 *Bill of Costs.*

THE STATE OF TEXAS
vs.
GRANVILLE RIPPEY. } No. 8532.

Clerk's costs.

Docketing	$ .25
Issuing writ	.75
Entering appearance	.30
Entering continuances	.60
Issuing subpœna	.75
Entering orders	.60
Entering judgment	.50
Filing papers	1.00
Entering motion	.50
Entering recognizance	1.00
Entering commitment	1.00
Making transcript	12.50
Total clerk's costs	$20.00

Sheriff's costs.

Making arrest	1.00
Serving subpœnas	1.50
Taking bond	1.00
Committing prisoner	1.00
Releasing prisoner	1.00
Jury tax	.50
	$6.00

Total clerk's costs	$20.00	
Total sheriff's fees	6.00	
Trial fees	5.00	
County attorney's fees	10 00	
Fine	25.00	& twenty days in jail.
Total costs and fine	$66.00	& twenty days in jail.

Clerk's Certificate.

THE STATE OF TEXAS,
County of Grayson. }

I, P. F. Ellis, clerk of the county court of Grayson county, Texas, do hereby certify that the above and foregoing 28 pages contains a

true and correct transcript of the proceedings had at the
26 January term of the county court of Grayson county, Texas, in cause No. 8532, styled: The State of Texas *vs.* Granville Rippey.

Witness my hand and official seal at office in the city of Sherman, Grayson county, Texas, this 9" day of February A. D. 1903.

P. F. ELLIS,
[L. S.] *Clerk of the County Court of Grayson County, Texas.*
By AMY ELLIS, *Deputy.*

Endorsements of Transcript.

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. 1st Assignment.

From the county court of Grayson county.

Applied for by Moseley & Eppstein, attorneys for appellant on the 16th day of January, 1902, and delivered to Moseley & Eppstein on the 9th day of February, 1903.

P. F. ELLIS,
Clerk County Court, Grayson County.

Filed in court of criminal appeals, at Dallas, Texas the 26 day of February, 1903.

J. M. GASTON,
Clerk Court of Criminal Appeals.

Order Showing Submission in Ct. Crim. App.

In Court of Criminal Appeals, Wednesday, March 4th, 1903.

Submitted on briefs of both parties:
2712—1st. Granville Rippey, from Grayson county.

27 *Opinion of Court of Criminal Appeals.*

Filed March 18, 1903.

GRANVILLE RIPPEY, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 2712. *1st Assignment.*

Appeal from Grayson County.

Opinion.

This is a conviction for violating the local option law; the punishment assessed being the minimum.

Appellant suggests but one question for decision, to-wit: "That the local option law of this State as embraced in title LXIX of the Revised Statutes, and especially articles 3384–3399 of said statutes, and art. 402 of the Penal Code, prescribing a penalty against any person who shall sell intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor had been prohibited, are invalid, null and void, in that said enactment of the legislature contravened the provisions of the Constitution of the United States, for this: that said enactment abridged the privileges and immunities of citizens of the United States, and deprived a large number of said citizenship, and especially appellant, of liberty and property without due process of law, and deny to a large class of citizenship of the State of Texas, including appellant, the equal protection of the laws, and such legislation constituted class legislation within the meaning of the law."

This case was before us under the writ of *habeas corpus*, at the Austin term, 1902, were these questions were at issue and decided adversely to appellant's contention. *Ex parte* Rippey, 68 S. W. 698. Practically the same questions were involved in Fields *vs.* State, 39 Tex. Cr. 50. In that case the questions were also decided ad-
28 versely to appellant. We see no reason for changing the views heretofore expressed in those opinions, and upon the authority of those cases, the judgment in this case is affirmed.

DAVIDSON,
Presiding Judge.

Delivered March 18, 1903.
Henderson, *J.*, absent.

Filed in court of criminal appeals, at Dallas, March 18, 1903.

J. M. GASTON, *Clerk.*

Judgment of Ct. Crim. App.

Ent. in minutes of said court, vol. 2, page 283.

In Court of Criminal Appeals, State of Texas, Wednesday, March 18th, 1903.

GRANVILLE RIPPEY
vs.
THE STATE. } 2712. 1st —. Form Grayson County.

Opinion by Davidson, P. J.

This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this court that there was no error in the judgment of the court below; it is therefore ordered, adjudged and decreed that said judgment be in all things affirmed. It is further ordered that the State of Texas do have and recover of and from the appellant, Granville Rippey, as principal, and L. B. Eppstein and L. Sarazan as sureties upon his recognizance all costs in this behalf incurred in this court and that this decision be certified below for observance.

29 *Petition and Order for Writ of Error.*

In the Court of Criminal Appeals.

GRANVILLE RIPPEY
vs.
THE STATE OF TEXAS.

To the honorable the Supreme Court of the United States:

Your petitioner, Granville Rippey, a citizen of the State of Texas and of the United States of America comes and respectfully shows that he, your petitioner, on to-wit, January 15th, 1903, in the county court of Grayson county, Texas, was convicted upon information presented in said court of a violation of the local option laws of the State of Texas, embracing article 402 of the Penal Code of said State, as well as articles 3384 to 3399 of the Revised Statutes of said State, and was adjudged to pay a fine of twenty five dollars, and to be confined in the county jail of Grayson county, Texas for a period of twenty days as a punishment under said laws.

Petitioner would further show to the court that prior to said conviction he, this petitioner, in said court, did file his motion in terms of law to quash the complaint and information so filed in said court against this petitioner on the ground that said laws of the State of Texas were violative of and in contravention of the Constitution of

the United States; and in said motion did set forth specifically wherein, according to the opinion of petitioner, said laws did so contravene the Constitution of the United States, which motion to quash was overruled by the court and conviction had as aforesaid.

30 Your petitioner would further show to the court that your petitioner, after said conviction and in due course of the laws of the State of Texas, did appeal from said judgment of the county court of Grayson county, Texas, to the court of criminal appeals of the State of Texas, which last named court is the court of last resort in said State of Texas in criminal matters; and thereafter, to-wit, on the — day of March, A. D. 1903, said judgment of the county court of Grayson county, Texas, was in all things affirmed by said court of criminal appeals of the State of Texas.

Petitioner comes now and shows to the court that there were grave errors committed in said prosecution in the county court of Grayson county and in the affirmance of the judgment of said court by the court of criminal appeals of the State of Texas, and he here now prays the court for a writ of error from the Supreme Court of the United States to the said court of criminal appeals of the State of Texas in order that said errors so committed shall be duly corrected, and full and speedy justice done to your petitioner, and petitioner files herewith a specification and assignment of the errors complained of.

As in duty bound petitioner will ever pray, etc.

F. M. ETHERIDGE,
GEO. CLARK,
D. C. BOLINGER,
Attorneys for Granville Rippey, Petitioner.

GRANVILLE RIPPEY
vs.
THE STATE OF TEXAS.

31 The foregoing application for writ of error having been presented the same is allowed as prayed for upon the plaintiff in error, Granville Rippey, entering into a bail bond in the sum of $500 00 with good and sufficient sureties, conditioned for his appearance before the county court of Grayson county, Texas, from day to day and from term to term there to abide the judgment of the Supreme Court of the United States upon said writ of error and said bail bond shall operate as a supersedeas. This April 8th, 1903.

W. L. DAVIDSON,
Presiding Judge, Court of Criminal Appeals of Texas.

Filed in court of criminal appeals of Texas at Dallas, April 13" 1903.

J. M. GASTON, *Clk.*

Bond for Writ of Error.

GRANVILLE RIPPEY, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.

THE STATE OF TEXAS,
Grayson County.

Know all men by these presents that we, Granville Rippey as principal and Louis Eppstein and Max Eppstein, sureties are held and firmly bound unto the State of Texas in the sum of five hundred dollars ($500.00) for which sum well and truly to be paid we do bind ourselves and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed sealed and dated this — day of April, 1903.

The condition of the above obligation is such that whereas, at a term of the county court of Grayson county Texas, upon information duly filed, to-wit; on January 15th, 1903, the principal herein, the said Granville Rippey, was convicted of an offense against the laws of the State of Texas in the criminal proceedings therein had
32 and was sentenced to pay a fine of $25.00 and to be confined in the county jail of said Grayson county, Texas for a period of twenty days. From which judgment of conviction said Granville Rippey did prosecute an appeal to the court of criminal appeals of the State of Texas and in said last named court, to-wit: on the — day of March A. D. 1903, said judgment of conviction was affirmed.

And whereas, since the affirmance of said judgment the said Granville Rippey, principal herein, has applied for and obtained from said court of criminal appeals of the State of Texas, and the presiding judge of said court, a writ of error from the Supreme Court of the United States to said court of criminal appeals of the State of Texas to revise and reverse said judgment, and has applied — and obtained from said court of criminal appeals a supercedeas upon the said Granville Rippey entering into bond in said sum of $500.00.

Now, if the said Granville Rippey will make his personal appearance before the homorable court of Grayson county, Texas and there remain from day to day and from term to term there to abide and perform the judgment of the Supreme Court of the United States upon such writ of error, then and in that event this obligation shall become void; otherwise to remain in full force and effect.

GRANVILLE RIPPEY. [SEAL.]
LOUIS EPPSTEIN. [SEAL.]
M. EPPSTEIN. [SEAL.]

Approved as supersedeas this 8 day of April, 1903.

W. L. DAVIDSON,
Presiding Judge, Court of Crimin- Appeals, State of Texas.

Filed in court of criminal appeals at Dallas, April 13" 1903.
J. M. GASTON, *Clerk.*

33 *Plaintiff in Error's Assignments of Error.*

In the Court of Criminal Appeals.

GRANVILLE RIPPEY
vs.
STATE OF TEXAS. } No. —.

To the honorable the Supreme Court of the United States:

In this case comes petitioner, upon grant of writ of error as prayed for, and files this his assignments of error and specifications of error committed by the court below in the trial of his case:

I.

The court of criminal appeals erred in affirming the judgment of the county court of Grayson county, Texas, because the laws of the State of Texas as embodied in article 402 of the Penal Code of the State, as well as in title LXIX of the Revised Statutes of the State of Texas, and especially articles 3384 to 3399 of said Revised Statutes, and under which enactments a conviction in this case was had are violative of the Constitution of the United States in that said laws abridge the privileges and immunities of citizens of the United States, and deprive certain citizens and class- of citizens, and especially plaintiff in error, of liberty and property without due process of law, and deny to many citzens and class- of citizens within the jurisdiction of the State of Texas the equal protection of the laws.

II.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction against plaintiff in error because the laws of the State of Texas aforesaid constitute class
34 legislation within the meaning of the law, and are antagonistic to the essential principles of free republican government, in that they discriminate in favor of certain persons holding certain views of public policy and against other persons and citizens holding opposite views, and deny equal rights to a large portion of the citizenship of Texas and of the United States, and bestow exclusive privileges upon a large class of other citizens of State of Texas and of the United States and which exclusive privileges are not in consideration of public services rendered.

III.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction against the plaintiff in

error, because article 3395 of the Revised Statutes of the State of Texas operates, and was so intended to operate as a denial to the citizens of Texas and of the United States the equal protection of the law, in that the provisions of said article discriminate against those who vote against prohibition in local option elections, and in favor of those who vote for prohibition; and said statutes further operate to disfranchise, at least for a period of two years, and in many cases for a much longer term, all citizens within a particular territory to be effected by an election who are opposed to prohibition and denies them the right, in frequent instances indefinitely and certainly for a period of two years to legislate upon that question; while upon the other hand it confers that right without limitation upon those who favor prohibition and authorizes the latter class to propose and to legislate by popular vote upon the question as often as they shall see fit.

IV.

The court of criminal appeals of the State of Texas further
35 erred in affirming the judgment of conviction against plaintiff in error, because said article 3395 of the Revised Statutes of the State of Texas denies the equal protection of the law to many citizens of the State of Texas and of the United States, and especially to the plaintiff in error, in that such article provides that a failure to carry prohibition in a city or town shall not prevent an election from being immediately thereafter held for the entire justice precinct or the county in which said town or city is situated and denies the citizens who oppose local option the privilege of so voting and legislating in the event prohibition should carry in a city or town.

V.

The court of criminal appeals of the State of Texas further erred in its affirmance of said judgment of conviction against the plaintiff in error, because said statute further denies the equal protection of the law, and especially to the plaintiff in error, in that it provides that in the event prohibition should fail to carry in a town or city, and immediately thereafter, those in favor of prohibition may inaugurate an election in a larger district to be selected by them, which shall include the said town or city, and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or city. And said statute further provides that if at an election prohibition should carry in a town or city, it cannot be defeated in said town or city by an inauguration of a subsequent election in an enlarged district; but upon the contrary, provides that when prohibition has carried at an elec-
36 tion in a town or city or precinct, such *such* prohibition shall not be repealed except at an election ordered and held for such town, city or precinct.

VI.

The court of criminal appeals of the State of Texas further erred in affirming the judgment of conviction aforesaid against plaintiff in error, because said laws of the State of Texas deny the equal protection of the law, in that they provide that when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered or held in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection, they further provide that should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated such election shall have the effect of abrogating the previous election held in the entire county in so far as the local subdivision is concerned.

For these and other errors apparent of record, plaintiff in error prays the court that the judgment of affirmance by the court of criminal appeals of the State of Texas in the case of plaintiff in error be reversed, and that direction be awarded by this court to the courts of Texas to dismiss the prosecution against the plaintiff in error.

F. M. ETHERIDGE,
GEO. CLARK,
D. C. BOLINGER,
Counsel for Plaintiff in Error.

Filed in court of criminal appeals at Dallas, April 13" 1903.
J. M. GASTON, *Clerk.*

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of *of* criminal appeals of the State of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court of criminal appeals of the State of Texas before you or some of you, in the highest court of the law or equity of the State of Texas in which a decision could be had in a suit or action between The State of Texas as plaintiff and Granville Rippey defendant in a criminal prosecution wherein was drawn in question the validity of a treaty or statute of or authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity: or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption, especially set and claimed under such

clause of the said Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of the said Granville Rippey, as by his complaint appears, we being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held that, the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and
38 according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and of said Supreme Court this 8th day of April one thousand nine hundred and three.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the Circuit Court of the United States,
Western District of Texas,
By J. W. HANCOCK, *Deputy.*

Allowed by
W. L. DAVIDSON,
Presiding Judge of the Court of
Criminal Appeals of the State of Texas.

[Endorsed:] No. 2712 Granville Rippey, pl'ff in error *vs.* The State of Texas def'd't in error Writ of error Filed in court of criminal appeals at Dallas, April 13" 1903 J. M. Gaston, clerk.

39 UNITED STATES OF AMERICA:

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of criminal appeals of the State of Texas, wherein Granville Rippy is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 8th day of April, in the year of our Lord one thousand nine hundred and three.

W. L. DAVIDSON,
Presiding Judge Court Criminal
Appeals of the State of Texas.

In behalf of the State of Texas, defendant in error in the foregoing citation, I hereby accept service of this citation this the 8th day of April, A. D. 1903.

C. K. BELL,
Attorney General for the State of Texas.

Attest: with seal of court.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART, *Clerk*,
By J. W. HANCOCK, *Deputy.*

[Endorsed:] No. 2712 Granville Rippy *vs.* The State of Texas. Citation in error. Filed in court of criminal appeals at Dallas, April 13" 1903 J. M. Gaston clerk.

40 THE STATE OF TEXAS:

I, J. M. Gaston, clerk of the court of criminal appeals of the State of Texas, do hereby certify that the foregoing (40) forty typewritten pages constitute a full, true and correct copy of the record, assignments of error, and of all the proceedings, and the original writ of error and citation in error and waiver endorsed thereon, to the Supreme Court of the United States, at Washington, in the case of Granville P. Rippey against The State of Texas, and that such court is the court of ultimate appeal in criminal cases in the State of Texas, thereof W. L. Davidson is presiding justice.

Seal Court of Criminal Appeals of Texas.

In testimony whereof, I hereunto set my hand as clerk and affix the seal of said court, at my office in Dallas, Texas, this 1st day of May A. D. 1903.

J. M. GASTON, *Clerk.*

[Endorsed:] No. —. Granville Rippey, plaintiff in error, *vs.* The State of Texas, defendant in error. From the court of criminal appeals of the State of Texas, at Dallas. Applied for by Etheridge & Baker, attorneys for plaintiff in error, on the *the* 11th day of April, A. D. 1903, and delivered to Etheridge & Baker on the 1st day of May A. D. 1903.

J. M. GASTON,
Clerk Court of Criminal Appeals of Texas.

Endorsed on cover: File No. 18,919. Texas court of criminal appeals. Term No. 273. Granville Rippey, plaintiff in error, *vs.* The State of Texas. Filed May 6th, 1903.

—IN THE—

Supreme Court of the U. S.

October Term, 1903.

No. 273.

GRANVILLE RIPPEY, PLAINTIFF IN ERROR.

VS.

STATE OF TEXAS, DEFENDANT IN ERROR.

In Error to the Court of Criminal Appeals of the State of Texas.

In this cause comes the plaintiff in error, Granville Rippey, and the defendant in error, the State of Texas, by their respective counsel, and here now move the Court to advance this cause and to set the same down for hearing at as early a day as may be compatible with the views of the Court.

The parties, plaintiff in error and defendant

in error respectively show to the Court that this case involves a controverted public question as to the constitutionality of certain statutes of the State of Texas, regulating the adoption by the people of particular localities in their capacity as voters, the prohibition of the sale of liquors in such localities, which question has involved for several years past serious controversies in the Courts of the State, necessitating frequent delays in the operation of said statutes, if constitutional, and is therefore, in the judgment of counsel, a case involving the public interests.

The contention of plaintiff in error in the Courts below, was that the statute violated in several respects the constitution of the United States, which contention is embodied in the record; and the decisions of the State Courts were against such contention and sustained the validity of the legislation. This particular case was begun by criminal proceedings instituted in the proper Court of the State of Texas against plaintiff in error, in which a conviction was had and a judgment entered adjudging plaintiff in error to be guilty of an offense against said statute and sentencing him to pay, not only a pecuniary fine, but to imprisonment in the County jail for twenty days; from which judgment of conviction in the trial Court an appeal was prosecuted to the Court of Criminal Appeals, of the State of Texas, in which last named Court the judgment of the Court below was in all things affirmed, and from which last named judgment a writ of error has been sued out from this Court to said Court of Criminal Appeals.

Premises considered, and in view of the public interests involved and the importance of the case

and its speedy determination which should be definitely settled, and this protracted controversy ended, both parties to the record, move the Court to advance the cause and to set the same down for trial at the earliest date that may suit the convenience of the Court.

F. M. ETHERIDGE,
GEO CLARK,
D. C. BOLINGER,

Counsel for Plaintiff in Error.

C. K. BELL,

Attorney General of Texas.

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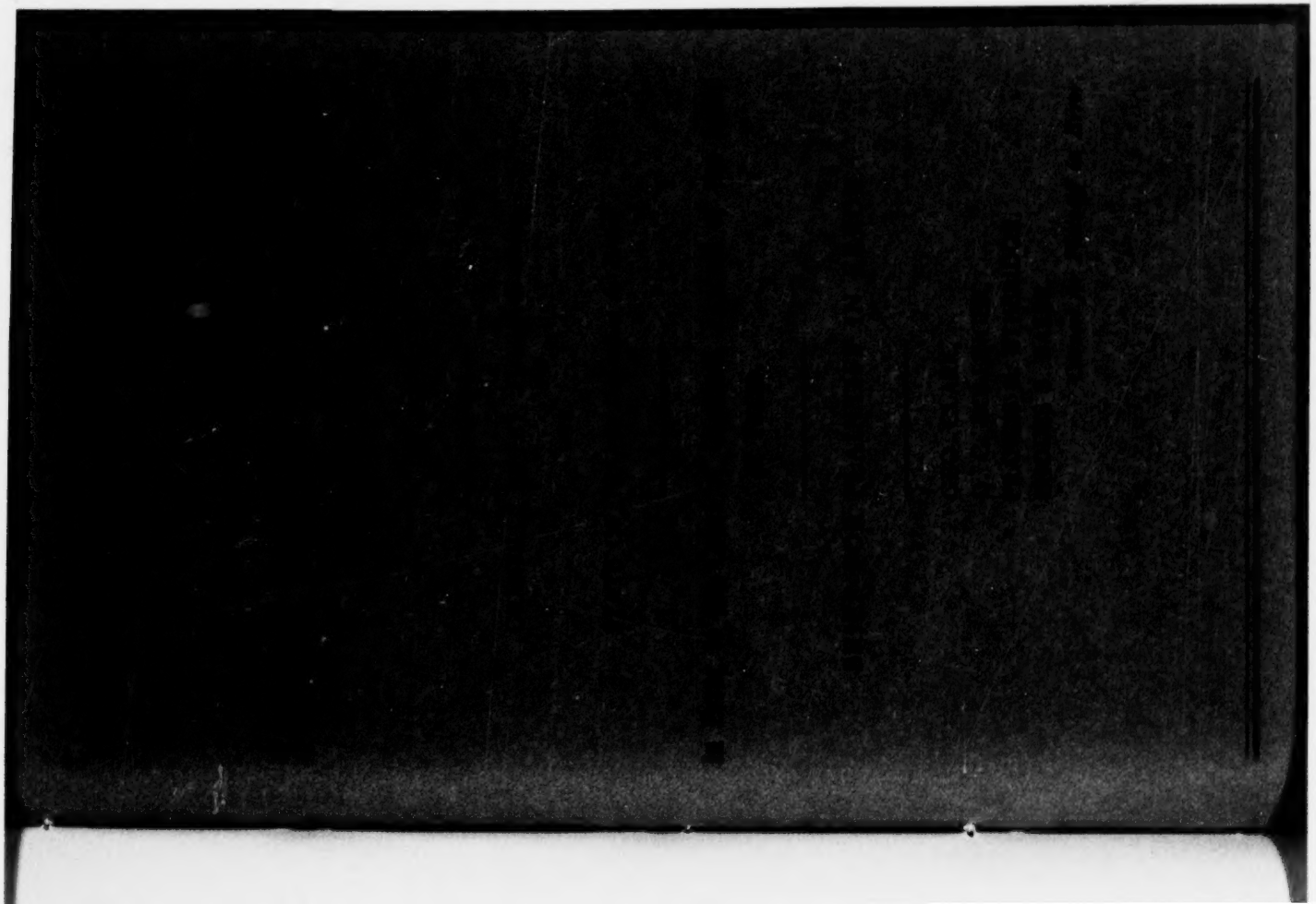
Counsel for Defendant in Error.



24901

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 273.

GRANVILLE RIPPEY, *Plaintiff in Error*,

vs.

STATE OF TEXAS, *Defendant in Error*.

In Error to the Court of Criminal Appeals of the State of Texas.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The plaintiff in error, Granville Rippey, was prosecuted in the County Court of Grayson County, Texas, by complaint and information, upon a charge of selling liquor in Precinct No. 4 of said Grayson County, after the qualified voters of said Precinct at an election duly held for that purpose, had determined that the sale of intoxicating liquors should be prohibited in said Commissioners' Precinct. The prosecution was instituted by complaint filed on April 19th, 1902, and upon which the County Attorney of said County filed his information on November 29th, 1902. (R. pp. 1–2.) Upon his arrest the plaintiff in error filed his motion to quash the complaint and information upon various grounds set forth, but in substance, that the laws of the State of Texas, under which he was being prosecuted, were violative of the Constitution of the United States in that, said laws denied to many persons, including plaintiff in error, within the jurisdiction of the State of Texas, the equal protection of the law, and discriminated in favor of certain persons holding certain views, and against other persons holding opposite views upon questions of public policy and concern. Nine grounds were set forth as the basis of said motion to quash. (R. pp. 3–5.)

The Court overruled the motion to quash, and upon trial judgment was entered against plaintiff in error, finding him guilty and assessing his punishment at a fine of $25.00, and confinement in the County jail for a period of twenty days. (R. pp. 5–6.)

The facts proven upon the trial are set forth in the record. They are as follows:

I.

Commissioners' District No. 4, the locus of the alleged offense, is composed of the two Justice's Precincts, each of which is composed of three voting boxes.

II.

On or about November 8th, 1901, a prohibition election was held in the western Justice Precinct, being Justice Precinct No. 6, which election resulted in favor of prohibition.

III.

Prior thereto, several months, an election was held in the town of Pottsboro, which was one of the voting boxes in the eastern Justice Precinct, which election was contested and resulted in no election.

IV.

After said election had been held in Pottsboro box, and before the election held in Justice Precinct No. 6, an election was called in the entire eastern Justice Precinct, which was Justice Precinct No. 7, which resulted against prohibition.

V.

Thereafter sometime during the Fall of 1901, an election was held in two school districts in Justice Precinct No. 7, in the voting box of Preston, which resulted in favor of prohibition.

VI.

By reason of the foregoing election after the 8th day of November, 1901, every box in Commissioners' District No. 4, except two, Pottsboro and Locust, had already declared in favor of prohibition, and in the only election in which these two boxes were included, the results had been against prohibition.

VII.

On February 2nd, 1902, an election was called for all of the Commissioners' District No. 4, which included all the boxes hereinbefore mentioned that had gone "dry" and the two boxes known as Pottsboro and Locust which had at all previous elections gone "wet", and it was admitted in open Court that these were the only portions of the District that had not previously by vote declared in favor of prohibition. This election resulted in favor of prohibition in the entire Commissioners' District, No. 4.

VIII.

All such elections were held as prescribed by the Revised Statutes of the State of Texas.

IX.

The plaintiff in error at Pottsboro in Commissioners' District No. 4, on the day mentioned in the information, sold one bottle of whiskey for the sum of one dollar. (R. pp. 6–7.)

The laws of the State of Texas, under which these elections were held and this prosecution was instituted, are as follows:

FROM THE REVISED CIVIL STATUTES OF TEXAS, 1895.

Article 3384. The Commissioners' Court of each county in the State, whenever they deem it expedient, may order an election, to be held by the qualified voters of said County, or of any Justices' Precinct, or such subdivisions of a county as may be designated by the Commissioners' Court of said County, or any town or city therein to determine whether or not the sale of intoxicating liquors shall be prohibited in such county, Justice' Precinct, or subdivision of such county, or in any town, or city; provided, it shall be the duty of said Commissioners' Court, to order the election aforesaid whenever petitioned to do so by as many as two hundred and fifty voters in any county, or fifty voters in any Justices' Precinct, or subdivision of such county, as shall be designated by said court, or in any city or town, as the case may be; provided, that if the Justices' Precinct or subdivision of such county, embrace within its limits an incorporated town or city or portions thereof, then such election shall only be ordered when the petition for the same is signed by qualified voters, not less than one-tenth in number of the total vote cast for governor at the next preced-

ing general election in such incorporated town or city; and in case an election is asked for a subdivision of such county, the petition shall describe such subdivision by metes and bounds, and the said petition and description of said subdivision shall be recorded in full in the minutes of the Commissioners' Court, and such description shall be embraced in the notice given for such election; provided no city or town shall be divided in making any such subdivision.

Art. 3385. The preceding article shall not be so construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, but such stimulant shall only be sold upon the written prescription of a regular practicing physician dated and signed by him, and certified on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the profession of medicine as his principal and usual calling shall not be authorized to give the prescription provided for in this article; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physician not herein authorized to give it, nor on a prescription that is not dated, signed and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for, shall cancel such prescription by endorsing thereon the word "cancelled," and file the same away.

Art. 3386. When the Commissioners' Court, of their own motion or upon the petition provided for in article 3384, shall order the election as herein provided for, it shall be the duty of said Court to order such election to be held at the regular voting place or places within the proposed limits, upon a day not less than fifteen nor more than thirty days from the date of said order, and the order thus made shall express the object of such election, and shall be held to be prima facie evidence that all the provisions necessary to give it validity, or to clothe the court with jurisdiction to make it, have been fully complied with; provided, that if there is no regular voting place within the proposed limits of a subdivision less than a Justices' or voting precinct, then the Commissioners' Court shall designate some suitable place within said subdivision where said election shall be held, and said place shall be named in the notices of election, and said court will appoint such officers to hold such election as are now required to hold general elections.

Art. 3387. The clerk of said court shall post, or cause to be posted, at least five copies of said order at different places within the proposed limits, for at least twelve days prior to the day of election, which election shall be held and the returns thereof made in conformity

with the provisions of the general laws of the State, and by the officers of election appointed and qualified under such laws.

Art. 3388. At said election those who favor the prohibition of the sale of intoxicating liquors within the proposed limits shall have written or printed on their tickets the words "For Prohibition," and those who oppose it shall have printed or written on their tickets the words "Against Prohibition."

Art. 3389. The officers holding said election shall, in all respects not herein specified, conform to the existing laws regulating elections; and after the polls are closed shall proceed to count the votes, and within ten days thereafter make due report of said election to the aforesaid court.

Art. 3390. Said court shall hold a special session on the eleventh day after the holding of said election, or as soon thereafter as practicable, for the purpose of opening the polls and counting the votes; and if a majority of the votes are "For Prohibition", said court shall immediately make an order declaring the result of said vote, and absolutely prohibiting the sale of intoxicating liquors within the prescribed limits, except for the purposes and under the regulations specified in this title, until such time as the qualified voters therein may at a legal election held for that purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of, and holding said election, and in counting and returning the votes, and declaring the result thereof.

Art. 3391. The order of court declaring the result and prohibiting the sale of such liquors shall be published for four successive weeks in some newspaper published in the county wherein such election has been held, which newspaper shall be selected by the county judge for that purpose. If there be no newspaper published in the county, then the county judge shall cause publication to be made by posting copies of said order at three public places within the prescribed limits for the aforesaid length of time. The fact of publication in either mode shall be entered by the county judge on the minutes of the Commissioners' Court. An entry thus made, or a copy thereof certified under the hand and seal of the clerk of the county court shall be held sufficient prima facie evidence of such fact of publication.

Art. 3392. If a majority voting at such election vote "Against Prohibition", the court shall make an order declaring the result, and have the same entered of record in the office of the clerk of said court.

Art. 3393. No election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that

time the Commissioner's Court of each county in the State, whenever they decree it expedient, may order another election to be held by the qualified voters of said county, or of any Justices' Precinct, or such subdivision of a county as may be designated by the Commissioners' Court of such county, for the same purpose; provided, it shall be the duty of such court to order the election aforesaid whenever petitioned to do so by as many as two hundred voters in any county, or fifty voters in any Justices' Precinct or subdivision of such county, as the case may be, to order an election for the same purpose, which election shall be ordered held, notice thereof given, the votes returned and counted, and the result declared and published, in all respects as provided by this title for a first election; and the order granting such other elections, as well as that declaring the result, shall, if prohibition be carried, have the same force and effect, and the same conclusiveness as are given to them in the case of a first election by the provisions of this title.

Art. 3394. When such second election results against prohibition, the court shall enter an order setting aside the previous order enforcing prohibition, and shall officially announce and publish the same as provided where the election resulted in prohibition.

Art. 3395. The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a Justices' Precinct or subdivision of such county as designated by the Commissioners' Court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire Justices' Precinct or county in which said town or city is situated; nor shall the holding of an election in a Justices' Precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the Justices' Precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any Justices' Precinct, town or city of said county until after prohibition has been defeated, at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any Justices' Precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

Art. 3396. When any such election has been held and has resulted in favor of prohibition, and the aforesaid court has made the order declaring the result, and the order of Prohibition, and has caused the same to be published as aforesaid, any person who shall thereafter

within the prescribed bounds of prohibition, sell, exchange or give away, with the purpose of evading the provisions of this title, any intoxicating liquors whatsoever, or in any way violate any of the provisions of this title, shall be subject to prosecution, by information or indictment, and shall be punished as prescribed in the Penal Code.

EXTRACTS FROM THE PENAL CODE OF TEXAS:

Art. 402. If any person shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited under the laws of this State, or if any person shall give away any intoxicating liquor in such county, justice precinct, city or town with the purpose of evading the provisions of said laws, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars and by imprisonment in the County Jail for not less than twenty nor more than sixty days.

Art. 403. The preceding article shall not apply to the sale of wines for sacramental purposes nor to alcoholic stimulants as medicines in cases of actual sickness, but such stimulants shall only be sold upon the prescription of a regular practicing physician, dated and signed by him and certified on his honor that he (the physician) has personally examined the applicant (naming him) and that he finds him actually sick, and in need of the stimulant prescribed as a medicine; provided, that a physician who does not follow the profession of medicine as his principal or usual calling, or who is in any way directly or indirectly engaged in the sale of such stimulants on his own account or as the agent, employe or partner of others, shall not be authorized to give the prescription provided for in this article; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor upon a prescription which has been cancelled, nor on a prescription which is not dated, signed and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for shall cancel such prescription by endorsing thereon the word "Cancelled", and file the same away.

Art. 404. It shall be the duty of any person who sells any intoxicating liquor upon the prescription provided for in article 403 to write across the face of the prescription, with ink, the word "Cancelled" and for any failure to do so he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and if any person shall sell any intoxicating liquor upon the prescription provided for in article 403, and shall permit the same to be drank at the place or establishment where sold, or at any other place provided for that purpose by such person, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars.

Art. 405. If any person who is not a regular practicing physician shall give a prescription to be used in obtaining any intoxicating liquor in any county, justice precinct, city or town, in which the sale of intoxicating liquor has been prohibited under the laws of this State; or if any practicing physician who is directly or indirectly either for himself or as the agent or employe of another, interested in the sale of intoxicating liquor, shall give a prescription to be used in obtaining any intoxicating liquor in any such county, justice precinct, city or town; or if any physician should give a prescription to be used in obtaining any intoxicating liquor in such county, justice precinct, city or town, to any one who is not actually sick, and without a personal examination of such person, he shall be punished by a fine of not less than twenty.five nor more than one hundred dollars, and by imprisonment in the County Jail not less than twenty nor more than sixty days.

Art. 406. If any person shall keep or run, or shall be in any manner interested in keeping or running a blind tiger in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited under the laws of this State, he shall be punished by confinement in the county jail not less than two nor more than twelve months, and by fine of not less than one hundred nor more than five hundred dollars. Each and every day such blind is run or kept shall be a separate offense. A "Blind Tiger" within the meaning of this article, is any place in which intoxicating liquors are sold by any device whereby the party selling or delivering the same is concealed from the person buying, or to whom the same is delivered. Upon complaint being filed with any justice of the peace, describing the place where any "blind tiger" is kept or run, such justice shall issue his warrant directing and commanding the sheriff or any constable of his county to search such place, and if the law is being violated, to arrest the person so violating it; and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant, and to arrest and bring before the justice who issued the writ all persons found by him therein; and if admission to this place is refused, the officer executing said warrant is hereby authorized to force open the same. In prosecutions under this article, where it is proven that there is posted up at the place where such blind tiger is kept or run, United States internal revenue liquor or malt license to any one it shall be prima facie proof that the person to whom such license is issued is keeping and running such blind tiger.

Art. 407. When the sale of intoxicating liquor has been prohibited in any county, justice precinct, city or town, the repeal of such prohibition shall not exempt from punishment any person who may have offended against any of the provisions of the law while it

was in force, and the fact that a person purchasing intoxicating liquor from any one who sells it in violation of the provisions of this chapter shall not constitute such person an accomplice.

The plaintiff in error, Granville Rippey, by bill of exception duly taken, reserved the error of the court in overruling the motion to quash the indictment, and perfected his appeal to the Court of Criminal Appeals of the State of Texas, alleging in his assignments of error, substantially, if not literally, the grounds of the motion to quash. (R. pp. 11-16.)

On March 18th, 1903, the Court of Criminal Appeals of the State of Texas, rendered its opinion, directing an affirmance of the judgment; and on the same date judgment was entered in that Court, affirming the judgment of the Court below. (R. pp. 19-20.)

On April 13th, upon petition of plaintiff in error, Granville Rippey, the Court of Criminal Appeals in terms of law allowed a writ of error to this Court, and plaintiff in error executed a bond conditioned as required by law to abide the result of the proceeding. (R. pp. 20-22.)

The plaintiff in error is now before this Court upon the following assignments of error, to-wit:

I.

The Court of Criminal Appeals erred in affirming the judgment of the County Court of Grayson County, Texas, because the laws of the State of Texas, as embodied in Article 402 of the Penal Code of the State, as well as in Title LXIX of the Revised Statutes of the State of Texas, and especially Articles 3384 to 3399 of said Revised Statutes, and under which enactments a conviction in this case was had are violative of the Constitution of the United States in that said laws abridge the privileges and immunities of citizens of the United States and deprive certain citizens and class of citizens, and especially plaintiff in error, of liberty and property without due process of law, and deny to many citizens and class of citizens within the jurisdiction of the State of Texas the equal protection of the laws.

II.

The Court of Criminal Appeals of the State of Texas further erred in affirming the judgment of conviction against plaintiff in error because the laws of the State of Texas aforesaid constitute class legislation within the meaning of the law, and are antagonistic to the essential principles of free republican government, in that they discrim-

inate in favor of certain persons holding certain views of public policy and against other persons and citizens holding opposite views, and deny equal rights to a large portion of the citizenship of Texas and of the United States, and bestow exclusive privileges upon a large class of other citizens of the State of Texas and of the United States and which exclusive privileges are not in consideration of public services rendered.

III.

The Court of Criminal Appeals of the State of Texas further erred in affirming the judgment of conviction against the plaintiff in error, because Article 3395 of the Revised Statutes of the State of Texas operates, and was so intended to operate as a denial to the citizens of Texas and of the United States the equal protection of the law, in that the provisions of said article discriminate against those who vote against prohibition in local option elections, and in favor of those who vote for prohibition; and said statutes further operate to disfranchise at least for a period of two years, and in many cases for a much longer term, all citizens within a particular territory to be effected by an election who are opposed to prohibition and denies them the right in frequent instances indefinitely and certainly for a period of two years to legislate upon that question; while upon the other hand it confers that right without limitation upon those who favor prohibition and authorizes the latter class to propose and to legislate by popular vote upon the question as often as they shall see fit.

IV.

The Court of Criminal Appeals of the State of Texas further erred in affirming judgment of conviction against plaintiff in error, because said article 3395 of the Revised Statutes of the State of Texas denies the equal protection of the law to many citizens of the State of Texas and of the United States and especially to the plaintiff in error, in that such article provides that a failure to carry prohibition in a city or town shall not prevent an election from being immediately thereafter held for the entire justice precinct or the county in which said town or city is situated and denies the citizens who oppose local option the privilege of so voting and legislating in the event prohibition should carry in a city or town.

V.

The Court of Criminal Appeals of the State of Texas further erred in its affirmance of said judgment of conviction against the plaintiff in error, because said statute further denies the equal pro-

tection of the law, and especially to the plaintiff in error, in that it provides that in the event prohibition should fail to carry in a town or city, and immediately thereafter, those in favor of prohibition may inaugurate an election in a larger district to be selected by them, which shall include the said town or city and in the event the election so to be held in such enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or city. And said statute further provides that if at an election prohibition should carry in a town or city, it cannot be defeated in said town or city by an inauguration of a subsequent election in an enlarged district; but, upon the contrary, provides that when prohibition has carried at an election in a town or city or precinct, such prohibition shall not be repealed except at an election ordered and held for such town, city or precinct.

VI.

The Court of Criminal Appeals of the State of Texas further erred in affirming the judgment of conviction aforesaid against plaintiff in error, because said laws of the State of Texas deny the equal protection of the law, in that they provide when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered or held in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection, they further provide that should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose, and in the event prohibition carries in any such subdivision so immediately inaugurated such election shall have the effect of abrogating the previous election held in the entire county in so far as the local subdivision is concerned. (R. pp. 23-25.)

BRIEF.

PROPOSITION I.

Under the Constitution of the State of Texas, relating to the question of local option, the Legislature of said State is deprived of all power to prohibit the sale of intoxicants in any locality, but such power is vested exclusively in the voting citizenship of each particular locality, town, city, justice precinct, county, or some subdivision thereof, to determine, by a majority vote at an election called for that purpose, whether or not the sale of intoxicants, except for mechanical

or sacramental purposes, shall be prohibited in the particular locality. And by the terms of the Constitution itself the Legislature is only vested with authority to prescribe regulations for such elections whereby the wishes of any particular locality may be determined according to the law. In other words, it is a rare instance of pure democratic government in a government of representative republicanism.

Constitution of Texas, Art. XVI., Sec. 20;
Dawson vs. State, 25 Tex. Ct. of App., 672;
Ex Parte, Bains 39 Tex. Crim. Rep., 62.

PROPOSITION II.

The statutes of the State of Texas presumably passed in pursuance of the constitutional provision, are violative of the Federal Constitution, in the following particulars to-wit: (1). Because Art. 3395 of the Revised Statutes of the State of Texas abridge privileges and immunities of the citizens of the State of Texas and of the United States; (2). Because said Article in its operation deprives many citizens of the United States and of the State of Texas, and especially the plaintiff in error, of liberties and property, without due process of law: (3). Said Art. 3395 denies to many citizens in the State of Texas the equal protection of the law: (4). Because said Art. 3395 and accompanying legislation herein before set out, constitute class legislation, in that, a certain class of citizenship is favored and an equally large class is discriminated against therein; and such discrimination involves the exercise of the most important functions of citizenship; and the case is not one in which the Legislature was authorized to make discriminations by classes under the Constitution of the United States: (5). Because said statutes hereinbefore set out contravene the provisions of the Constitution of the United States as construed by the Court of Criminal Appeals of the State of Texas, in that they deny equal rights to a large portion of citizenship of the State of Texas, if not a majority, and bestow exclusive privileges upon a large class of other citizens of said State, which exclusive privileges are not in consideration of public services rendered: (6). Because said statutes, and especially Art. 3395 operate to deny to the citizens the equal protection of the law, in that, they discriminate against those who vote against prohibition and in favor of those who vote for prohibition; and operate to disfranchise for a period, at least of two years, all citizens within the territory to be affected, who are opposed to prohibition, and deny them the right for such period of time to legislate upon the question, while upon the contrary it confers that right upon those who favor prohibition to vote therefor as often as they shall see

fit: (7). Because said statutes, especially Art. 3395 further deny the equal protection of the law, in that, they provide that the failure to carry prohibition in a town or city shall not prevent an election from being immediately thereafter held for the entire justice precinct, or county in which said town or city is situated, and deny to those citizens who oppose local prohibition the privilege of so voting in the event prohibition should carry in the town or city: (8). Because said statutes further deny the equal protection of the law, in that, they provide in the event prohibition shall fail to carry by vote in the town or city, that immediately thereafter those in favor of prohibition may inaugurate an election for an enlarged district to be selected by them, which shall include the said town or city, and in the event the election so held in such enlarged territory shall be carried in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or city. And because said statutes further provide that if at an election prohibition should carry in a town or city, it cannot be defeated by an inauguration of a subsequent election in an enlarged district; and upon the contrary provides that when prohibition has been carried at an election in a town, city or precinct, such prohibition shall not be repealed except at an election ordered and held for such town, city or precinct earlier than two years thereafter: (9). Because said statutes further deny the equal protection of the law, in that, they provide, that when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county; and in disregard and denial of equal protection they further provide that should an election fail to carry prohibition in the county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may choose; and in the event prohibition carries in any such subdivision so immediately inaugurated, such election shall have the effect of abrogating the previous election held in the entire county.

Constitution U. S., Art. 14, Sec. 1;
Railway Co. vs. Ellis, 165 U. S., 150;
Connolly vs. Pipe Line Co., 184 U. S., 540;
Penbina Mining Co. vs. Pa., 125 U. S., 188-9;
Duncan vs. Missouri, 152 U. S., 382;
Missouri vs. Lewis, 101 U. S., 22;
Marchant vs. Pa., 153 U. S., 389;
Barbier vs. Connoly, 113 U. S., 27;
Hayes vs. Missouri, 120 U. S., 68;
Magoun vs. Trust Co., 170 U. S., 293,

Kentucky Tax Cases, 115 U. S., 337;
Railroad vs. Pa., 134 U. S., 237;
McPherson vs. Blacker, 146 U. S., 39;
In Re Kemmler, 136 U. S., 436;
Ex parte Jones, 38 Cr. App., 428;
Ex parte McCarver, 46 S. W. Rep., 939;
Fraser vs. McConway, 82 Fed. Rep., 860;
Juanita Limestone Co. vs. Fagley, 187 Pa. St., 197;
In Re Day, 181 Ill., 80;
Luman vs. Hitchens Bros. Co., 90 Md., 27;
Wansel vs. Hoos, 60 N. J. L., 526;
People vs. Hawkins, 157 N. Y., 526;
State vs. Hoyt, 71 Vt., 64.

ARGUMENT.

Upon an examination of the record in this case and the laws cited ante, in this brief, the Court will ascertain that the question presented herein is somewhat out of the usual order. Ordinarily the question of discrimination between citizens arises from the operation of some positive statutory enactment, duly passed by authority, and which in its operation directly affects the citizens complaining. We have here, however, a different condition as held by the court of last resort in criminal matters in the State of Texas. Under the peculiar provisions of the constitution of that State, the Legislature is powerless to enact laws prohibiting the sale of intoxicants in any locality in that State, but, this must be done, if at all, by the citizens of the particular localities coming together at the polls and there voting their wishes, without which no prohibition can obtain in that State. This is settled by the Texas cases cited under the first proposition, ante. In Dawson vs. the State (25 Tex. Ct. App.), that court holds as follows:

"Section 20 of article 16 of the Constitution provides as follows: 'The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, justice's precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.' What is the extent of the power conferred upon the Legislature by the foregoing provision? Simply to enact a law enabling the qualified voters of the localities designated to determine, in accordance with such law, whether the sale of intoxicating liquors shall be prohibited within specified limits. No power was conferred upon the Legislature to prohibit the sale of intoxicating liquors, but such power was vested alone in the qualified voters of the localities named—such power to be exercised by

them in the manner to be provided by the Legislature. It is only by a majority vote of the qualified voters of a locality that the sale of intoxicating liquors within the limits of said locality can be prohibited. Hence is derived the common name of the law upon the subject, that is, the Local Option Law". While it is a general law in the sense that it may be adopted in any portion of the State, it is nevertheless, in its effect and operation, when adopted, essentially local, deriving its force directly and entirely from the will of the qualified voters of the locality in which it is adopted, and continues in force in such locality until it is abrogated by the will of said voters declared in the manner provided by law. This will, this power on the subject is absolute and exclusive in the qualified voters of the locality, to be declared and exercised by them, in accordance with the law enacted in pursuance of the provision of the Constitution we have quoted."

We may remark that since that decision, Sec. 20, of Art. 16 of the Texas Constitution has been amended, but not in such manner as to affect or qualify the decision of the court. The only amendment added being the insertion of the words, after the word city, "or such subdivision of the county as may be designated by the Commissioners' Court of said county". This amendment was made on September 22nd, 1891, and may be found in the Revised Statutes of Texas of 1895, page XXXIX.

Since said amendment to-wit: on March 16th, 1898, the Court of Criminal Appeals of the State of Texas has re-affirmed the doctrine laid down in the Dawson case (ex parte Bains 39 Tex. Crim. Rep. 62.) So we are confronted with a law constitutional and statutory, under which in the matter of prohibition, a pure democracy is called into being, and wherein the voting citizenship actually are vested with the function of legislators and legislate directly without the aid and in the position of their representatives. And the question before the Court stripped of all superfluity is whether or not under the powers granted the Legislature of Texas in the Constitution of that State, it is competent for the Legislature, regardless of the provisions of the Federal Constitution, to discriminate in a palpable manner against a large number, perhaps a large majority of these citizen legislators, and in favor of a minority of such legislators. In other words was it competent for the Legislature of the State of Texas to tie the hands of a certain class of her citizenship, when called upon to exercise the very highest rights of citizenship, by such legislation as is herein before set out, and at the same time and to a very marked degree, loose the hands of another class of citizenship, so that their wishes or desires in matters of Legislation should have the full and free opportunity of expression and enactment. This is the question before the Court and it is a question

that cannot be answered by the rule laid down by this Court in previous cases as to the right of classification under the legislative power of the State. For the purpose of the case at bar there can be but two classes —those who favor prohibition in any locality, and those who oppose prohibition, and these two classes constitute the entire body of voting citizenship.

The case is one, not only involving the privileges and immunities of a citizen, and cannot be dismissed with the statement, as has been frequently said by some courts, that the right to sell liquor is not a privilege or immunity of a citizen, within the meaning of the Constitution. Much more is involved in the question than the sale of liquor by an individual. The question is one of paramount constitutional importance, not only involving the liberty of a citizen, as shown by the record, but likewise involving equal rights and privileges on the part of a vast mass of citizenship in a State wherein those rights have been grossly discriminated against in the legislation complained of. It is a small matter; hardly worthy of judicial consideration, whether intoxicating liquors should be sold in any one particular locality in the State of Texas, but it is a matter of paramount and supreme importance, not only to the State of Texas, but to the citizenship of the United States, whether or not laws, which deny any large body of citizenship made up of all classes shall be enacted and a large class of citizenship denied the full protection of the law and subjected to an arbitrary unjust discrimination and a discrimination destructive of one of the fundamental principles of our government, to-wit: Equality before the law.

Nor is it a case wherein a necessity exists for such discrimination, nor can the decision of this court upon it in favor of, or against the plaintiff in error, be productive of any serious result, for legislative correction can be applied speedily if the errors assigned by plaintiff in error are adjudged by this court to be tenable. There was no necessity for this unequal, unjust and arbitrary legislation in the first instance in the adoption of regulations enabling the voting citizenship of Texas to legislate, but this purely local question could have been settled upon a plane of perfect equality, whereby no citizen could have been injured or deprived of his constitutional rights of absolute equality, and which latter course, if pursued in the first instance would have brought about a much greater regard for the law and obedience to the law, had it been pursued.

So we submit that the Court can approach the decision of this question with the utmost calmness and with perfect freedom to expound the Constitution as applicable to the state of facts presented in this record, without stopping to consider whether any right of the

State is involved or whether any function of the State could be in any manner paralyzed by its decision.

The 14th amendment of the Constitution inhibits the States from denying to any person within their respective jurisdiction the equal protection of the law. It also inhibits a State from making or enforcing any law, which shall abridge the privileges or immunities of citizens of the United States or which shall deprive any person of life, liberty or property without due process of law. It is needless to trace the history of this amendment before this Court, or to consult and discuss the many decisions handed down by this Court since the adoption of the amendment, for none of them are in point. The question resolves itself into this: Do the deprivations inhibiting a large class of citizenship of the State of Texas from proposing legislation on the liquor question upon equal terms with another large class who favor prohibition, come within the denunciations of the amendment. In other words, is the right to legislate under this peculiar provision of the Constitution of Texas a right or privilege protected by the amendment?

In some cases it is held in dissenting opinions in this Court that the rights intended to be protected by the amendment were civil rights as contradistinguished from political rights, but we have in our investigation found no case in which a majority of the court have as yet laid down that principle. The right claimed here is the right of citizens under a pure democracy to propose legislation consonant with their views of government, under the provisions of the Texas Constitution. The act of adopting or rejecting local prohibition is necessarily a purely legislative act. As said before it is a matter upon which the Legislature itself is powerless to act It can neither adopt prohibition in any locality, nor can it repeal it, but the whole subject is remitted to the voters of any particular locality to determine for themselves whether or not the sale of intoxicants shall be prohibited in that special locality. It would be doing violence to all theories of Legislative procedure, if a portion of a body was authorized to propose legislation, while another portion of the same body was inhibited from so doing. Indeed the proposition, if seriously made would be most startling. That this is the effect of the legislation is palpable, even from a casual reading of the enactments. The 14th amendment confirms citizenship, not only of the United States but of the State, wherein any person resides who is born or naturalized in the United States and subdivision of the jurisdiction thereof. Its purpose, as stated frequently by this Court may have been to secure to the negro race all the civil rights enjoyed by the white race, but its terms are broader than this limited purpose, and actually bestow citizenship of the State, as well as of the United States. That this right of citizenship to legislate under the constitution of Texas

unquestionably is a privilege of citizenship, can hardly be questioned, as there can be no higher exercise of the right of citizenship than to have a voice in the legislation of the locality. This right is clearly abridged with reference to a very large class of citizenship of Texas, who are citizens of the United States under the amendment, and the discrimination against this class is palpable.

I.

The enactment of the Legislature of Texas clearly operates to disfranchise and to stifle for a period of two years all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally. While upon the contrary it apparently confers that right upon those who favor prohibition to vote therefor as often as they shall see fit.

II.

These laws further operate against those opposing prohibition, in providing that the failure to carry prohibition in a town or city, shall not prevent an election from being thereafter held in a justice's precinct or county, in which said town or city is situated, and denies to those citizens who oppose local prohibition the privilege of so acting in the event prohibition should carry in the town or city.

III.

Said statutes further deny the equal protection of the law and deprive a vast body of citizenship of the highest privilege of citizenship in that, they provide, that in the event prohibition should carry in a town or city, immediately thereafter those in favor of prohibition may inaugurate an election in an enlarged district, to be selected by them, which shall include the said town or city, and in the event the election so to be held in such enlarged territory shall carry in favor of prohibition, the same shall operate as an abrogation and repeal of the previous election held in said town or city.

IV.

These statutes further provide that, if at an election prohibition should carry in the town or city it cannot be defeated by the inauguration of a subsequent election in the enlarged district, but upon the contrary, that when prohibition has been carried at an election in a town or city or precinct, such prohibition shall not be repealed except at an election ordered and held in such city or precinct.

V.

They further provide that, when prohibition has been carried at an election in the entire county, no election shall thereafter be ordered in any subdivision of said county until after prohibition has been defeated in the entire county; and they further provide that should an election fail to carry prohibition in a county, those in favor of prohibition may immediately thereafter inaugurate an election for any and all such portions of the county as they may select, and in the event prohibition carries in any such subdivision so inaugurated, such election shall have the effect of abrogating the previous election held in the entire county, in so far as that subdivision is concerned.

Further discussion would seem to be useless. The deprivation of privileges and the discrimination is apparent, and the enactments seem to have been drawn with an eye special to most unduly favor the rights of prohibitionists and to the utter disregard of the rights of that other class, who fail to see in prohibition a panacea for every social ill.

The Legislature of Texas by the enactments in question has in effect declared that the one class should be a favored class under the laws of the State, and the other class should be anathematized. It is needless to say that the intelligence and respectability of the State cannot be subject to this discriminating arrangement, and a careful investigation would develop the fact that a preponderance of good citizenship was on the side of the class discriminated against.

The question before the Court is not one wherein the Legislature has acted directly in the interests of the health or morals of its citizenship. This power is recognized not as absolute, but as only affected by the terms of the 14th Amendment to the extent that such Legislation shall not violate the provisions of the organic law of the United States. We freely concede the power of the Legislature of Texas the protection of the people of the said State by appropriate legislation, either in their health, in their morals, or in their general welfare, but that is not the question here. The Legislature has not assumed, and could not have the power to legislate directly upon the question. The Legislature has not prohibited the sale of liquor within the State or within any particular locality, because that function of legislation is not confided to it, but to the people, in the adoption of the State Constitution. The legislation in question is simply a mode of procedure prescribed by the Legislature by which a legislative expression of the people of any particular locality may be secured under the form of law. There is nothing in the Constitution of Texas which seems to contemplate any such discrimination or any such deprivation of privileges. The Constitution of Texas is not obnoxious to any provision of the

Constitution of the United States, at least in this regard. It's provisions are simple and its directions plain. There is no flavor of injustice or discrimination in any of its terms; indeed, properly construed, the discriminating features of the legislation are obnoxious to its very constitutional provisions. It commands the Legislature to enact the law whereby the qualified voters of any particular locality may upon a majority vote determine from time to time whether the sale of intoxicating liquors shall be prohibited within the prescribed limits. If the intention of the Constitution had been carried out, there could be no just cause of complaint. Certainly in a government like ours, in which a majority must necessarily determine from time to time its policies, no citizen could complain at the decision of a majority whether it comported with his ideas of government or otherwise. Instead of preserving, according to their sense and meaning, the mandates of the Texas Constitution, the Legislature has seen fit to utterly disregard it, and has provided elections for prohibitionists from time to time with alarming frequency, while the time afforded those opposed to prohibition was lengthened out so as to amount to practically a denial on their part of similar privileges. Instead of providing in its true sense and meaning, local self government, bearing equally upon the entire body of citizenship, the Legislature of Texas, under the construction given by the courts to the law, has absolutely deprived towns and cities and small subdivisions of the right of local self government, and has authorized and encouraged combinations of larger subdivisions for the purpose of overthrowing and trampling under foot the will of the people in the towns and cities. The intention of the people of Texas in framing the constitutional provision was to observe equality, while the intention of the Legislature in the enactment of the procedure evidently was to destroy it.

We submit that the legislation is obnoxious as complained of in the assignments of error, and the judgment of conviction in this case should be reversed and the prosecution ordered dismissed.

Geo. Clark

D. C. Bolinger

Francis M. Etheridge

Rhodes S. Baker

Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM 1903.

Office Supreme Court U. S.
FILED
FEB 15 1904
JAMES H. McKENNEY,
Clerk

No. 273.

GRANVILLE RIPPEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.

C. K. BELL,
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Counsel for the State of Texas, Defendant in Error.

VON BOECKMANN-JONES COMPANY, PRINTERS, AUSTIN, TEXAS.

Supreme Court of the United States.

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BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The statement of the case in brief of counsel for plaintiff in error (pp. 1-11) is agreed to as a correct presentation of the case and need not be repeated here.

For convenience of reference, the Local Option Statute of Texas, being Article 3384 to 3399, Title 69, Revised Civil Statutes, and Article 402, Code Criminal Procedure, together with the provision of the Constitution authorizing such legislation, are printed in full as an appendix to this brief.

The contentions of plaintiff in error are succinctly stated in the first and second paragraphs of the assignments of error on page 23 of the record, and are as follows:

"The Court of Criminal Appeals erred in affirming the judgment of the county court of Grayson county, Texas, because the laws of the State of Texas, as embodied in Article 402 of the Penal Code of the State, as well as in Title LXIX of the Revised Statutes of the State of Texas,

and especially Articles 3384 to 3399 of said Revised Statutes, and under which enactments a conviction in this case was had, are violative of the Constitution of the United States, in that said laws abridge the privileges and immunities of citizens of the United States, and deprive certain citizens and class of citizens, and especially plaintiff in error, of liberty and property without due process of law, and deny to many citizens and class of citizens within the jurisdiction of the State of Texas the equal protection of the laws."

"The Court of Criminal Appeals of the State of Texas further erred in affirming the judgment of conviction against plaintiff in error because the laws of the State of Texas aforesaid constitute class legislation within the meaning of the law, and are antagonistic to the essential principles of free republican government, in that they discriminate in favor of certain persons and citizens holding opposite views, and deny equal rights to a large portion of the citizenship of Texas and of the United States, and bestow exclusive privileges upon a large class of other citizens of the State of Texas and of the United States, and which exclusive privileges are not in consideration of public services rendered."

What further follows in the assignments of error in this case, are only amplifications of the propositions stated above, in their application to the various provisions of the law.

The Local Option Law of Texas provides for an election to be held in any county or subdivision thereof, or in any city or town, to determine whether or not the sale of intoxicating liquors shall be prohibited in such territory. If a majority of the votes cast are in favor of such prohibition, upon declaration and publication of the result, it shall thereafter be unlawful to sell intoxicating liquor in the prescribed territory for which the election was held, and by a criminal statute (Article 402, Criminal Code), appropriate penalties are provided for such offense.

This law is not peculiar to Texas, but, at least in its general features, is in force in several of the other States of the Union.

In Texas the enactment of the law is expressly authorized by the present Constitution of the State. (Art. 16, Sec. 20, of the Constitution. (See Appendix.)

BRIEF.

PROPOSITION I.

The right to engage in the business of selling intoxicating liquors is not a "privilege or immunity of citizens of the United States" within

the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Bartemeyer vs. Iowa, 18 Wall., 129-133.
Giozza vs. Tiernan, 148 U. S., 657, 661-62.
Vance vs. W. A. Vandercook Co., 170 U. S., 438-444.
Crowley vs. Christenson, 137 U. S., 86-91.
The "privileges and immunities" protected are only those flowing from Federal citizenship.
Slaughter House cases, 16 Wall., 37.

PROPOSITION II.

The laws in question do not deprive any person of "liberty or property" within the meaning of the Fifth and Fourteenth amendments to the Constitution.

AUTHORITIES.

Mugler vs. Kansas, 123 U. S., 623.
Kid vs. Pearson, 128 U. S., 1.
Beer Co., vs. Massachusetts, 97 U. S., 25-33.

PROPOSITION III.

The laws in question do not deny to any person within the jurisdiction of the State of Texas the equal protection of the law.

AUTHORITIES.

Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 283-293.
Barbier vs. Connally, 113 U. S., 27-31.
Powell vs. Pennsylvania, 127 U. S., 678-683.
Busch vs. Webb., 122 Fed. R., 655-669.
Ex parte Fields, 39 Tex. Crim. App. R., 50.
Rippey vs. State, 68 S. W. R., 687, and 73 S. W. R., 15.
Kimberly vs. Morris, 10 Tex. Civ. App. Rep., 592-596.

ARGUMENT.

It is quite too late now to raise constitutional objections to laws which have the effect to prohibit the sale of intoxicating liquors. Such laws come clearly within the ordinary police powers of the State, whether they absolutely prohibit the manufacture and sale, within the State, as in the case of the law of Kansas under discussion in Mugler vs. Kansas (123 U. S., 623), or, in the milder form of law authorizing local option prohibition (Ex parte Burnside, 86 Ky., 429; Territory vs. O'Connor

5 Dak., 411), or local municipal regulation (Crowley vs. Christensen, 137 U. S., 86), they control or prohibit the traffic in particular localities.

By reported decisions of this court, and other courts, Federal and State, such laws have been held to be within the police powers of the States and outside of the prohibitions of the Federal Constitution.

There are, however, certain provisions of the Texas Local Option Laws which, it is insisted, discriminate in favor of certain individuals or classes and against other individuals or classes, and are obnoxious to that provision of the Fourteenth Amendment of the Federal Constitution which forbids legislation on the part of any State, the effect of which will be to "deny to any person within its jurisdiction the equal protection of the laws."

These obnoxious provisions are found in Article 3395, Revised Statutes, which is as follows:

"Art. 3395. The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct."

It is provided by Article 3393 that when an election has been once held, for any county or subdivision thereof, whatever may be the result of such election, no other election shall be held within the same prescribed limits for the space of two years.

If the voters of a county have either carried or defeated prohibition, at any election held under the law, the question is settled, so far as the county is concerned, for two years, and it is the same with regard to an election for a town or city or other subdivision of a county. So far there is absolute equality between those who favor and those who oppose the law.

By the subsequent article (3395) of the statute, however, it is pro-

vided that if, at an election held for the entire county, the result should be in favor of prohibition, no election shall be held under the law for any subdivision of the county until the law shall have been defeated in an election held for the entire county.

That is; where the people of the entire county have *voted the law in* it shall remain in force, in the entire county, until the people of the entire county *have voted it out.*

In the same way, when the people of an entire justice's precinct have voted the law in, it shall remain in force in the entire justice's precinct until the people of the entire justice's precinct have voted it out, or until it has been voted out of the entire county.

On the other hand, if at an election for the entire county, the people should fail to vote the law in for the entire county, that shall not prevent an election at any time thereafter for any city or town, or other subdivision of the county, to determine the question for such locality, and, in the same way, if at an election for a justice's precinct the people should fail to vote the law in for the entire precinct, that shall not prevent an election at any time thereafter to determine the question for the entire county nor shall failure to carry prohibition in an election for a town or city prevent an immediate election for the entire justice's precinct.

Here is where, plaintiffs in error contend, the discrimination and inequality come in. This apparent discrimination and inequality, however, disappear upon a close examination of the provisions of the Act in which it is claimed they inhere.

Until the law is put in operation, the general condition is that under which the right to sell liquor exists and is protected. Starting from this general condition, if the people of a county under the forms provided, determine that liquor shall not be sold in the county, that condition prevails over the entire county until the people of the county determine otherwise under the forms provided. The law simply recognizes the right of the voters of the entire county to abrogate the general condition by putting and continuing in force over the entire county the prohibition of the sale of liquor, regardless of the fact that a majority of the voters in some one or more subdivisions of the county may be opposed to the law.

In like manner the law recognizes the right of a majority of the voters of a justice's precinct or other subdivision of a county, containing a town or city, to abrogate the general condition by putting and continuing in force throughout the entire justice's precinct or other subdivision, the prohibition of the sale of liquor regardless of the fact that a majority of the voters of such city or town may be opposed to the law, and when once put into operation in the county or larger subdivision, the condition of prohibition must continue until it is abrogated by a

vote of the entire county, or larger subdivision in which it has been put in operation. On the other hand if, at an election held for the entire county, the result is against the law, the general condition continues; the case stands if no such election has been held, and the people of subdivisions of the county are free to hold an election under the law, as if no election for the county had been held.

The law gives to the people of the county the right, if they so choose, to put the law in operation in that county. If they do not so choose, it gives to people of certain subdivisions of the county, if they choose, the right to put the law in operation in such subdivision. If neither a majority of the people of the entire county nor of any subdivision thereof are in favor of the adoption of the law for the county or subdivision respectively, then a majority of the people of any city or town in such subdivision may adopt the law for such city or town.

We hope the court will pardon this seemingly prolix statement as to the meaning, purpose and effect of these provisions of the statute, as we are persuaded that a clear understanding thereof will render any argument unnecessary to show the court that they do not involve any denial to any person of "the equal protection of the laws" within the meaning, purpose or intent of the inhibitions of the Federal Constitution.

No distinction is here made between persons; no right is given to one person that is denied to another, or to one class of persons that is denied to another class, under like circumstances.

Wherever the right is given to one person or class of persons to petition for an election under the law, it is given to all persons under the same circumstances and conditions; wherever it is denied to one it is denied to all under the same circumstances and conditions.

When prohibition has been put in force in a county by a majority of the voters of the county, the law says to all alike this condition must prevail throughout the county, until a majority of the voters of the county declare otherwise under the forms of law. When prohibition has been put in force in a justice's precinct by a majority of the voters of the precinct, the law says to all alike, this condition must prevail throughout the precinct, until a majority of the voters of the precinct or the entire county declare otherwise under the forms of law.

Plaintiffs in error contend that, inasmuch as a failure to adopt the law at an election held for the entire county does not prevent a subsequent election to determine that question for a subdivision of the county; so the adoption of the law by the voters of the county should not prevent a subsequent election to determine the question for a subdivision of the county, and that this inequality in the operation of the law is an unlawful discrimination against them and persons in like cases, amounting to a denial of the equal protection of the laws. But the conditions are entirely different.

In the one case the people of the county say by their votes, "we do not desire that the prohibition law be adopted *for this entire county.*" This they say and no more, leaving the voters of any subdivision free to decide the question for themselves as to such subdivision, which is in no way inconsistent with the unfavorable result of the election for the county.

In the other case the people of the county say by their votes, we desire that the prohibition law be enforced throughout the entire county. To allow the people of any subdivision of the county at a subsequent election to say that the law shall not be enforced in such subdivision is inconsistent with the result of the election held for the entire county, is equivalent, in effect, to denying to the people of a county the right to put the law in force over any subdivision of the county in which a majority of the voters should be opposed to the law, and destroys the autonomy of the county in this particular.

Allowing an election to be held for a subdivision of the county after a failure to put the law in operation in the entire county at an election held for the county, does not have this effect, because the county has not thereby declared that the law shall not be put in operation in any part of the county, but only that it shall not be put in operation in the entire county. An affirmative vote, at an election held for the county, is conclusive and binding upon the entire county, including all subdivisions thereof, until reversed by the entire county, while a negative vote is not conclusive upon the subdivisions of the county, but this difference in results arises naturally, if not necessarily, from the nature of the question submitted. This seems to be one of the inequalities in the law complained of by plaintiffs in error, but this certainly can not be considered as a denial to them, or to any person or class of persons, of the equal protection of the laws under the most latitudinous construction of this provision of the Constitution.

The meaning of the language "the equal protection of the laws" has never been exactly defined. In fact it has been stated that a more particular definition than the words themselves afford is impracticable. (Brannon's Fourteenth Amendment, p. 319.)

It was stated by this court in In re Kemmler (136 U. S., 436), "The object of the Fourteenth Amendment in respect to citizenship was to preserve equality of right and to prevent discrimination between citizens, but not to radically change the whole theory of the relations of the State and Federal government to each other and of both governments to the people."

We are sure that this court will agree with us that in dealing with this question, of such momentous importance to the peace, good order and morals of communities affected thereby, the Legislature of the State should be given as free a hand as is consistent with the restrictions of the

Federal Constitution. All of the constitutional objections here urged against the law in question have been many times fully, in some cases very emphatically, answered by this court, with the exception of those based upon the particular features of the law embodied in Article 3395.

Plaintiffs in error contend that these features of the law must be eliminated in obedience to the restrictions of the Fourteenth Amendment, in that they constitute class legislation, confer privileges upon those in favor of the prohibition of the sale of intoxicating liquor which are denied to those opposed to prohibition, and, in fine, deny to them and others similarly situated, the equal protection of the laws.

To obviate this objection, the law should provide either that after an election in a county at which a majority of the voters have declared in favor of prohibition for the entire county, any city or town or other subdivision of the county should be allowed, at once to nullify the will of the voters of the entire county as to such subdivision by "voting prohibition out," or that after such election for the entire county, at which prohibition was defeated, no subdivision of the county should be allowed to have prohibition enforced in such subdivision.

So far as this particular feature is concerned, there would be probably no objection to the law on the ground that it allowed a majority of the voters of the county to impose their will upon the entire county, in voting to put the law in operation, if it allowed such majority to impose their will upon the entire county in voting not to put it in operation.

There is, candidly, this much of inequality in the law, which goes upon the theory that a majority of the voters of the county should be allowed to put the law in force throughout the entire county, whether a majority in one or more subdivisions favor it or not, and that each of the recognized subdivisions, should likewise be allowed to put the law in operation in such subdivision whether the balance of the county favors it or not.

There is not an absolute and ideal equality of right to vote prohibition out and to vote it in—to put the law in operation and to abolish it.

But do the provisions of the Federal Constitution relied upon by plaintiff in error aim to secure such ideal equality, or to secure equality at all *as to the two sides of a question* like this, having no relation to the question of the equality of rights of individuals? There can be no question that "the law operates equally and uniformily upon all persons in similar circumstances." No right to vote is given to a prohibitionist that is not given to an anti-prohibitionist. No right to petition for an election is given to the one that is not given to the other, nor can there, under the law, arise any case in which an election would not be ordered upon the petition of the one, as of the other.

Under certain circumstances and according to certain rules and formalities, an election will be ordered, whether upon the petition of pro-

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hibitionists or anti-prohibitionists. Except under these circumstances, no election will be ordered upon the petition of either. If there be inequality in the operation of the law, in that favor is shown *to one side of the question* that is not shown to the other, it is still well within the police powers of the State, and, we think, entirely without the restrictive provisions of the Federal Constitution.

Referring to the equality demanded by the constitution, we beg to quote from the opinion of this court in Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 293: "What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constitutents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' Kentucky Railroad Tax cases, 115 U. S., 321-337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. Hayes vs. Missouri, 120 U. S., 68. Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule *prescribes no rigid equality and permits to the discretion and wisdom of the State a wide latitude as far as interference by this court is concerned.* Nor with the impolicy of a law has it concern. Mr. Justice Field said in Mobile County vs. Kimball, 102 U. S., 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional vaidity.'

"The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations."

There is a wide difference between allowing a majority of the voters of a county to determine that intoxicating liquors shall not be sold in the county, or any part or subdivision of it, regardless of the wishes of a majority of voters in certain portions or subdivisions, who may be opposed to the law; and allowing a majority of such voters in a county to determine that intoxicating liquors may be sold in every portion or

subdivision of such county, regardless of the wishes of a majority of voters of such subdivision.

Except by those who deny to the State the right to prohibit the sale of liquor at all, no objection can be urged to the local option feature of the law allowing each county to prohibit such sale throughout the county. It is a different matter to forbid to local communities and subdivisions of a county the right to prohibit the sale of liquor within their limits also. The law simply recognizes and gives force to this difference arising from the very nature of the question.

The county may prohibit if it chooses to do so. If it does not choose then any local subdivision may do so for itself.

There are some legal propositions so fanciful and imaginative, with so little of solid substance to be grasped, that these features really constitute the difficulty in answering them.

With the highest respect for the learned counsel for plaintiffs in error, the objection to this law that it "denies to persons within the jurisdiction of the State of Texas the equal protection of the laws" seems to be a proposition of this kind.

On page 18 of brief of counsel for plaintiff in error Rippey occurs the following:

"The enactment of the Legislature of Texas clearly operates to disfranchise and to stifle for a period of two years all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally. While upon the contrary it apparently confers that right upon those who favor prohibition to vote therefor as often as they shall see fit."

It would appear that according to counsel's construction of the law, an election in any county or subdivision of a county may be at once ordered after an election at which prohibition is defeated, while such election can not be ordered for two years after such election at which prohibition is carried. Counsel says that the law *apparently* has this effect. It seems to us entirely clear that the statute can not be so construed, but can only be construed to prohibit an election for any county or subdivision thereof, within two years after an election held for such county or subdivision without regard to the result of such previous election, thus "stifling and disfranchising for a period of two years" prohibitionists and anti-prohibitionists alike.

If it be held that this provision that a second election shall be held for the same locality only after two years, "abridges the privileges and immunities of citizens of the United States" it would follow that to relieve the law of this objection citizens should be allowed to vote upon the question as often as the time for giving notices, etc., would permit. This would result, practically, in a perpetual, unintermittent fever

of campaigning on this question, with elections recurring several times each year, with the burdensome expense necessarily attendant thereon. If only such a law would meet this objection, then local option prohibition is utterly impracticable, and resort must perforce be had to absolute State prohibition after the fashion of the Constitution of Kansas, under discussion in the Mugler case.

We hardly think counsel for plaintiff in error, Rippey, intends seriously to contend that to limit local option elections to one every two years in and for the same locality, "abridges the privileges of citizens of the United States," in violation of the Constitution, but only that such "abridgement" must apply to prohibitionists and anti-prohibitionists alike, which in fact is done by the plain import of Article 3393, in so far as elections for the same locality are concerned. In so far as the provisions of Article 3395 may deprive prohibitionists of "privileges and immunities" granted to anti-prohibitionists and thus also deprive them of the equal protection of the laws," that is an objection which we have endeavored to answer elsewhere in this brief.

We quite agree with counsel for plaintiff in error, Rippey, that "the court can approach the decision of this question with the utmost calmness and with perfect freedom to expound the Constitution as applicable to the state of facts presented in this record," but we can not agree with them that this court can do so "without stopping to consider whether any right of the State is involved, or whether any function of the State could be in any manner paralyzed by its decision." On the contrary we submit that a most important right of the State is directly involved in the decision of this case.

The law under discussion has been enacted by the Legislature of the State, as, upon the whole, and in consideration of all of the conditions prevailing in this State, the best means of dealing with a matter of very great importance.

It has been upheld by all of the courts of this State and declared free from any violation of the Federal or State Constitution. The particular feature of the law attacked in this case have not been adopted without serious consideration. We are quite sure this court "will stop to consider" the right of the State to pass this law. Any hysterical or sentimental view of the matter is to be deprecated, but it is neither hysterical nor sentimental to claim for the State the right and the power, in this and in all other cases, to pass such laws as may seem proper to its law-making body, subject only, so far as this court is concerned, to the limitations and inhibitions of the Federal Constitution.

It is respectfully submitted that the judgments of the court of Criminal Appeals in this case should be affirmed; that the moderate and conservative local option laws of the State should be allowed to stand and

the State not be forced to adopt absolute State prohibition in order to protect itself against the recognized evils of the liquor traffic.

C. K. Bell C. K. Bell
Attorney General.
J. S. Reese T. S. Reese,
Assistant Attorney General.
Counsel for the State of Texas, Defendant in Error.

APPENDIX.

CONSTITUTION OF TEXAS.

Article 16, Section 20. The Legislature shall at its first session enact a law whereby the qualified voters of any county, justice's precinct, town, city (or such subdivision of a county as may be designated by the commissioners' court of said county) may by a majority vote determine from time to time whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

TITLE LXIX.—LOCAL OPTION.

Article 3384. [3227] The commissioners' court of each county in the State, whenever they deem it expedient, may order an election, to be held by the qualified voters of said county, or of any justice's precinct, or such subdivisions of a county as may be designated by the commissioners' court of said county, or any town or city therein, to determine whether or not the sale of intoxicating liquors shall be prohibited in such county, justice's precinct, or subdivision of such county, or in any town, or city; provided, it shall be the duty of said commissioners' court to order the election aforesaid whenever petitioned to do so by as many as two hundred and fifty voters in any county, or fifty voters in any justice's precinct, or subdivision of such county, as shall be designated by said court, or in any city or town, as the case may be; provided, that if the justice's precinct, or subdivision of such county, embrace within its limits an incorporated town or city or portions thereof, then such election shall only be ordered when the petition for the same is signed by qualified voters, not less than one-tenth in number of the total vote cast for Governor at the next preceding general election in such incorporated town or city; and in case an election is asked for a subdivision

of such county, the petition shall describe such subdivision by metes and bounds, and the said petition and description of said subdivision shall be recorded in full in the minutes of the commissioners' court, and such description shall be embraced in the notice given for such election; provided, no city or town shall be divided in making any such subdivision.

Art. 3385. [3228] The preceding article shall not be so construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, but such stimulant shall only be sold upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the profession of medicine as his principal and usual calling shall not be authorized to give the prescription provided for in this article; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physician not herein authorized to give it, nor on a prescription which is not dated, signed, and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for, shall cancel such prescription by endorsing thereon the word "cancelled," and file the same away.

Art. 3386. [3229] When the commissioners' court, of their own motion, or upon the petition provided for in article 3384, shall order the election as herein provided for, it shall be the duty of said court to order such election to be held at the regular voting place or places within the proposed limits, upon a day not less than fifteen nor more than thirty days from the date of said order, and the order thus made shall express the object of such election, and shall be held to be prima facie evidence that all the provisions necessary to give it validity, or to clothe the court with jurisdiction to make it, have been fully complied with; provided, that if there is no regular voting place within the proposed limits of a subdivision less than a justice's or voting precinct, then the commissioners' court shall designate some suitable place within said subdivision, where said election shall be held, and said place shall be named in the notices of election, and said court will appoint such officers to hold such election as are now required to hold general elections.

Art. 3387. [3230] The clerk of said court shall post, or cause to be posted, at least five copies of said order at different places within the proposed limits, for at least twelve days prior to the day of election, which election shall be held and the returns thereof made in conformity with the provisions of the general laws of the state, and by the officers of election appointed and qualified under such laws.

Art. 3388. [3231] At said election those who favor the prohibition

of the sale of intoxicating liquors within the proposed limits shall have written or printed on their tickets the words "For prohibition," and those who oppose it shall have printed or written on their tickets the words "Against prohibition."

Art. 3389. [3232] The officers holding said election shall, in all respects not herein specified, conform to the existing laws regulating elections; and after the polls are closed shall proceed to count the votes; and within ten days thereafter make due report of said election to the aforesaid court.

Art. 3390. [3233] Said court shall hold a special session on the eleventh day after the holding of said election, or as soon thereafter as practicable, for the purpose of opening the polls and counting the votes; and if a majority of the votes are "For prohibition," said court shall immediately make an order declaring the result of said vote, and absolutely prohibiting the sale of intoxicating liquors within the prescribed limits, except for the purposes and under the regulations specified in this title, until such time as the qualified voters therein may at a legal election held for that purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election, and in counting and returning the votes and declaring the result thereof.

Art. 3391. [3234] The order of court declaring the result and prohibiting the sale of such liquors shall be published for four successive weeks in some newspaper published in the county wherein such election has been held, which newspaper shall be selected by the county judge for that purpose. If there be no newspaper published in the county, then the county judge shall cause publication to be made by posting copies of said order at three public places within the prescribed limits for the aforesaid length of time. The fact of publication in either mode shall be entered by the county judge on the minutes of the commissioners' court. And entry thus made, or a copy thereof certified under the hand and seal of the clerk of the county court shall be held sufficient prima facie evidence of such fact of publication.

Art. 3392. [3235] If a majority voting at such election vote "Against prohibition," the court shall make an order declaring the result, and have the same entered of record in the office of the clerk of said court.

Art. 3393. [3236] No election under the preceding article shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that time the commissioners' court of each county in the State, whenever they decree it expedient, may order another election to be held by the qualified voters of said county, or of any justice's precinct,

or such subdivision of a county as may be designated by the commissioners' court of such county, for the same purpose; provided, it shall be the duty of such court to order the election aforesaid whenever petitioned to do so by as many as two hundred voters in any county, or fifty voters in any justice's precinct or subdivision of such county, as the case may be, to order an election for the same purpose, which election shall be ordered held, notice thereof given, the votes returned and counted, and the result declared and published, in all respects as provided by this title for a first election; and the order granting such other elections, as well as that declaring the result, shall, if prohibition be carried, have the same force and effect and the same conclusiveness as are given to them in the case of a first election by the provisions of this title.

Art. 3394. [3237] When such second election results against prohibition, the court shall enter an order setting aside the previous order enforcing prohibition, and shall officially announce and publish the same as provided where the election resulted in prohibition.

Art. 3395. [3238] The failure to carry prohibition in a county shall not prevent an election for the same being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

Art. 3396. [3239] When any such election has been held and has resulted in favor of prohibition, and the aforesaid court has made the order declaring the result, and the order of prohibition, and has caused the same to be published as aforesaid, any person who shall thereafter, within the prescribed bounds of prohibition, sell, exchange or give away, with the purpose of evading the provisions of this title, any intoxicating liquors whatsoever, or in any way violate any of the provisions of this title, shall be subject to prosecution, by information or indictment, and shall be punished as prescribed in the Penal Code.

Art. 3397. [3239a] At any time within thirty days after the result of the election has been declared, any qualified voter of the county, justice's precinct or subdivision of such county, or in any town or city of such county in which such election has been held, may contest the said election in any court of competent jurisdiction, in such manner as has been or may hereafter be prescribed; and should it appear from the evidence that the election was illegally or fraudently conducted; or that by the action or want of action on the part of the officers to whom was intrusted the control of such election, such a number of legal voters were denied the privilege of voting as had they been allowed to vote might have materially changed the result; or if it appears from the evidence that such irregularities existed as to render the true result of the election impossible to be arrived at, or very doubtful of ascertaining, the court shall adjudge such election to be void, and shall order the proper officer to order another election to be held, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer upon whom is devolved by law the duty of ordering such election.

Art. 3398. In all cases where any person, firm or association of persons pursuing the occupation of liquor dealers under license issued in accordance with the laws of this State has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county, precinct, subdivision of such county, town or city, a proportionate amount of the taxes paid by him for the unexpired term shall be refunded to him.

Art. 3399. It is hereby made the duty of the district judges to give this law in charge to the grand juries; and it is made the special duty of the county attorneys to file or have filed a complaint in the county court of said county against all houses, and the keepers thereof, used for the sale, exchange or gift of any kind of intoxicating liquors, in any county, justice's precinct or subdivision of such county, or of any town or city in such county in this state when local devices are resorted to, to prevent or avoid detection of the keeper thereof, and upon said complaint being filed with any justice of the peace, describing the place where the device is kept, and the name of the person violating this law, if known, said justice of the peace shall issue his warrant commanding any sheriff or constable to search said place, and, if the law is being violated, to arrest the person or persons so violating the law; and it shall be the duty of the sheriff of the county wherein such house or place where such device is kept, for the sale or gift of intoxicating liquors, to demand admission into the same, and upon admittance being refused, the sheriff is hereby authorized and required by law to force open the same and arrest and hold for trial before the courts all such persons who shall violate any of the provisions of this title; and it is

the duty of the county judges and justices of the peace, having jurisdiction in the premises, to see that this law is rigidly enforced; provided, no arrest or search shall ever be made until the sheriff shall first procure a warrant therefor, issued by the proper authority.

CRIMINAL STATUTE.

Art. 402. [378] If any person shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited under the laws of this state, or if any person shall give away any intoxicating liquor in any such county, justice precinct, city or town, with the purpose of evading the provisions of said laws, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars, and by imprisonment in the county jail for not less than twenty nor more than sixty days.

Supreme Court of the United States.

No. 273.—October Term, 1903.

Granville Rippey, Plaintiff in Error
vs.
The State of Texas.
} In error to the Court of Criminal Appeals of the State of Texas.

[March 21, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

The plaintiff in error was convicted of selling intoxicating liquors contrary to vote of his precinct prohibiting such sale. This vote was in pursuance of a statute which the plaintiff in error alleges to be contrary to the Fourteenth Amendment of the Constitution of the United States. The question was raised at the outset by a motion to quash, which was overruled subject to exception, the exception was overruled on appeal, and the case was brought here by writ of error.

The Constitution of Texas, Art. 16, sect. 20, required the Legislature to enact a law by which the majority of qualified voters of any county, justice's precinct, town or city, from time to time might determine whether the sale of intoxicating liquors should be prohibited. The Legislature thereupon enacted what now are Articles 3384–3399 of the Revised Statutes, and Articles 402–407 of the Penal Code. These all are assailed, but the particular object of attack is Art. 3395.

Article 3395 is as follows:

Art. 3395. [3238] The failure to carry prohibition in a county shall not prevent an election for the same being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's

precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

It will be seen that this section discriminates in favor of those who vote for prohibition; and the argument is that since the Legislature was not authorized to pass a prohibitory law, *Dawson* v. *State*, 25 Texas Crim. Rep. 670, 674, 675, but was required to leave the question to a local vote, it necessarily created a pure democracy to that extent, and therefore could not interfere with the equality of the voters in their right to propose or carry a law. Many questions would have to be answered before so speculative a piece of ratiocination could be followed. But we think it may be dealt with in short space, so far as is necessary to decide this case.

We follow the State Court of course, as to the State Constitution, and assume that the law is not invalid under that. The question for us is whether, if the State Constitution undertakes to authorize such a law, it encounters the Constitution of the United States. It is a question of the power of the State as a whole. *Missouri* v. *Dockery*, 191 U. S. 165, 171. But the State has power to prohibit the sale of intoxicating liquors altogether, if it sees fit, *Mugler* v. *Kansas*, 123 U. S. 623, and that being so it has power to prohibit it conditionally. It does not infringe the Constitution by giving those in favor of the sale a chance which it might have denied. It is true that the greater does not always include the less. A man may give his property away, yet he may not contract with a carrier to take the risk of the latter's negligently injuring it, or part with it on the valuable consideration of a wager. But in general the rule holds good. It does here. The State has absolute power over the subject. It does not abridge that power by adopting the form of reference to a local vote. It may favor prohibition to just such degree as it chooses, and to that end may let in a local vote upon the subject as much or as little as it may please. There is no such overmastering consideration of expediency attaching everywhere and always to the form of voting, still less is there any such principle to be drawn from the Fourteenth Amendment, as requires the two sides of a vote on prohibition to be treated with equal favor by the State, the subject matter of the vote being wholly within the State's control. The only chance for the plaintiff in error to prevail was under the State Constitution. He has no case under the Constitution of the United States.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.